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THE OLD YELLOW BOOK

SOURCE OF BROWNING'S

THE RING AND THE BOOK

IN COMPLETE PHOTO-REPRODUCTION

WITH

TRANSLATION, ESSAY, AND NOTES

BY

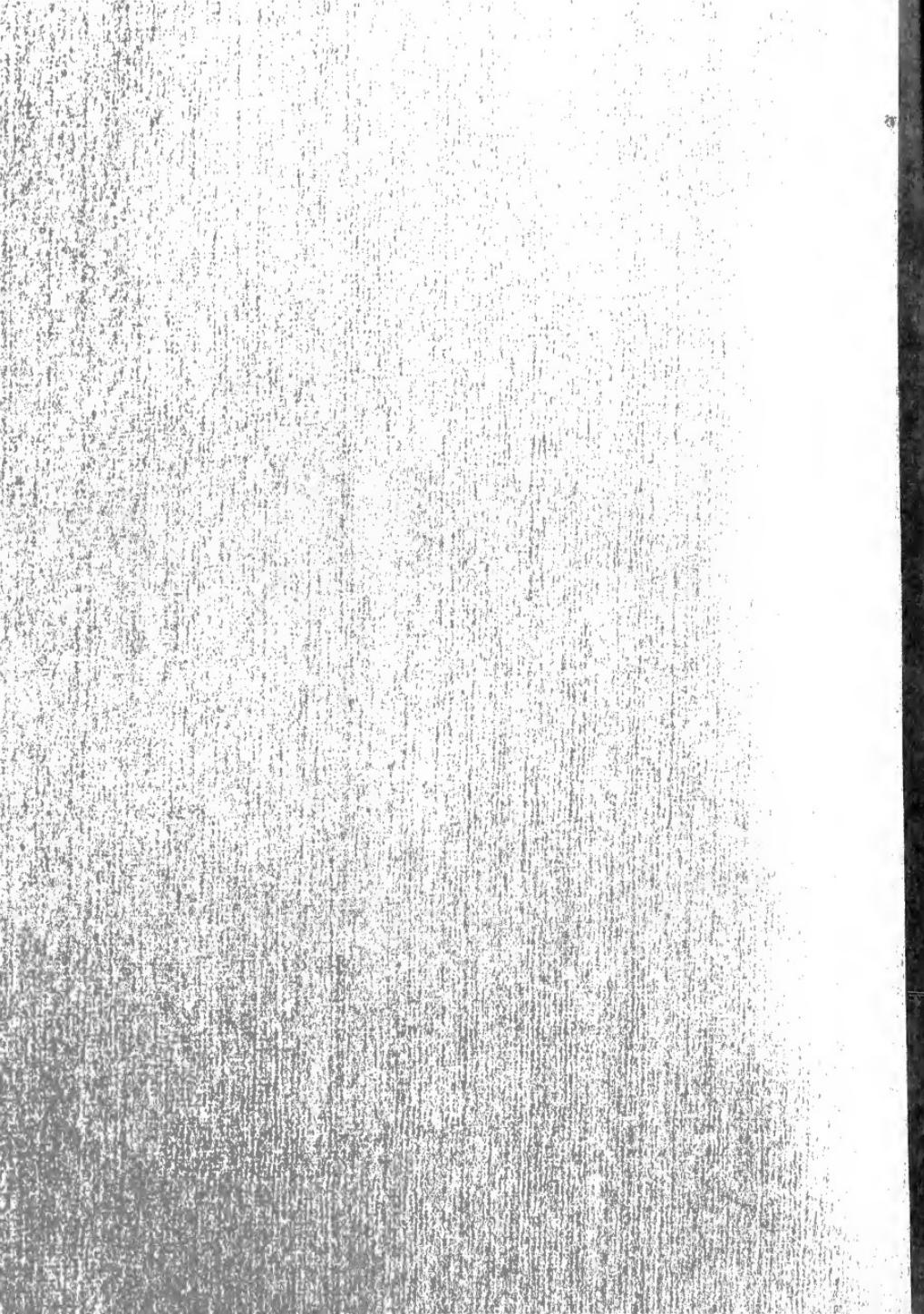
CHARLES W. HODELL



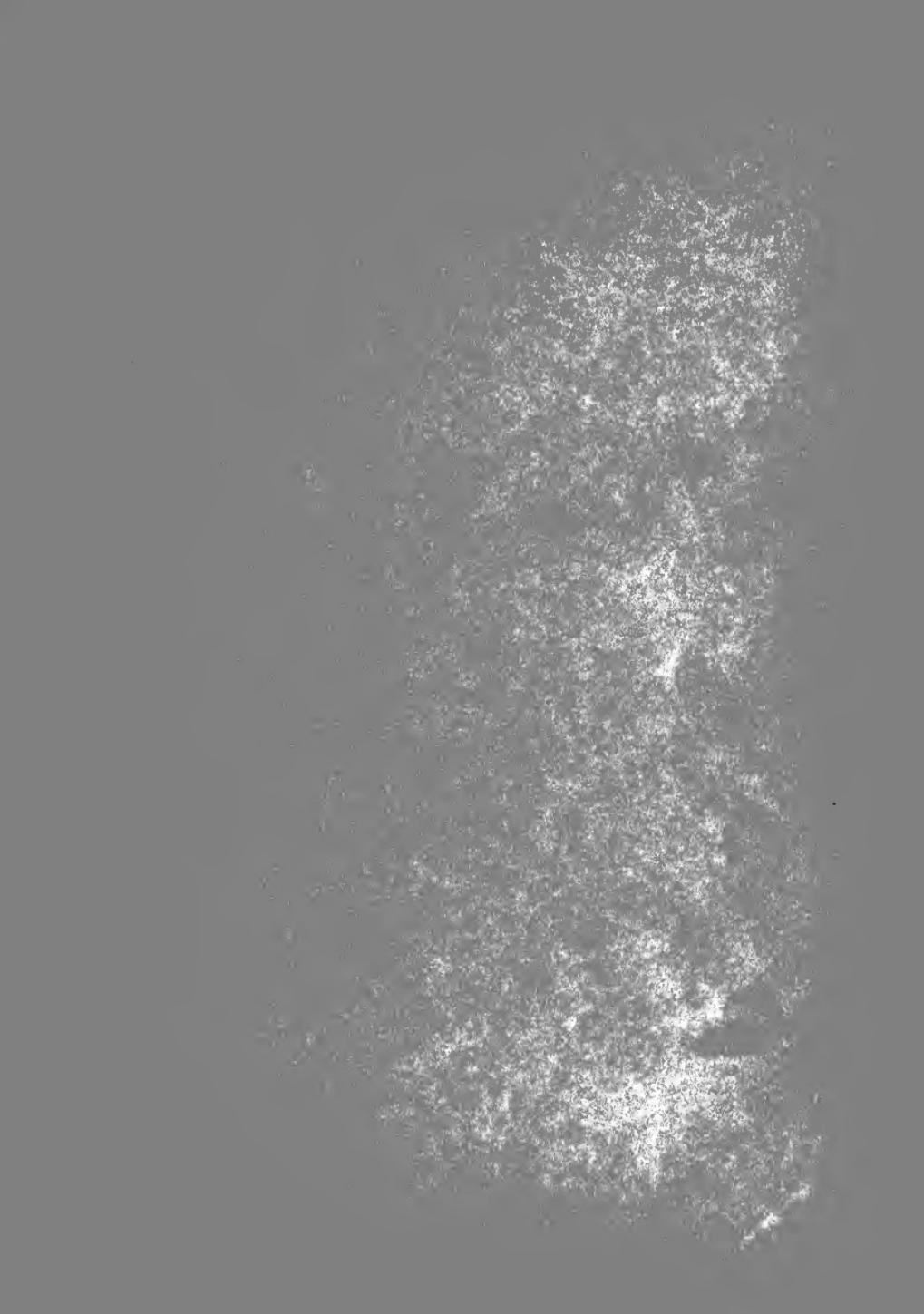
PUBLISHED BY THE

CARNEGIE INSTITUTION OF WASHINGTON

JULY, 1908



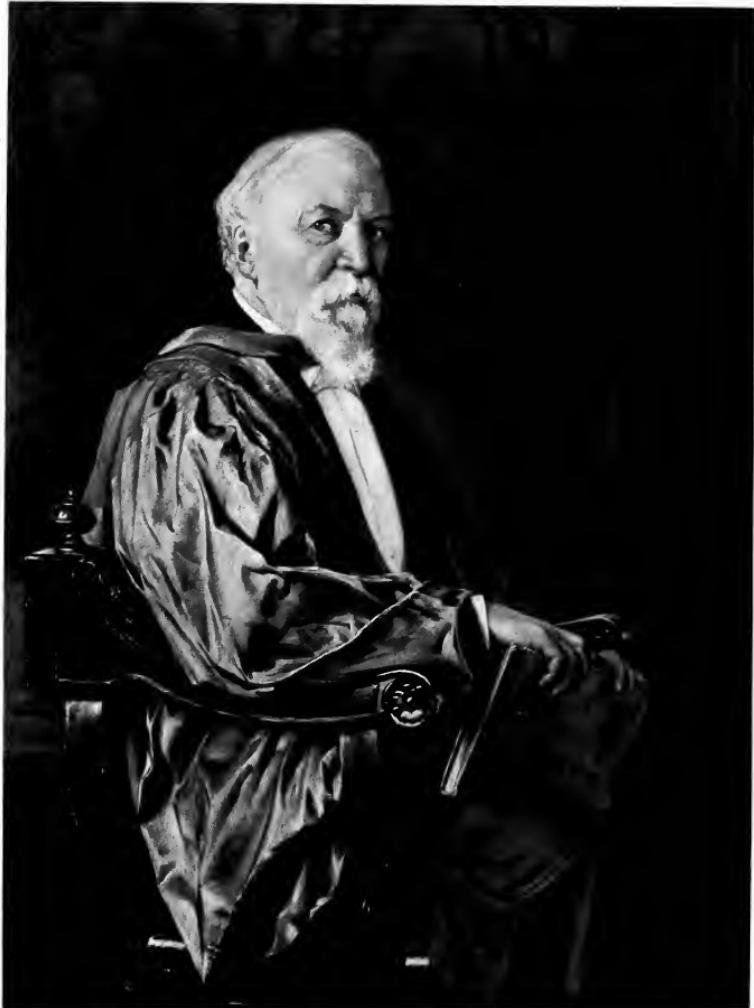






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THE DIALECT OF THE
WELSH MOUNTAINS

BY JAMES HENRY BROWN

WITH A HISTORY OF THE WELSH LANGUAGE

AND A HISTORY OF THE WELSH CHURCH

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GENERAL PREFACE.

The present volume has grown from an interest in *The Ring and the Book*, originating years ago in the instruction of Professor Hiram Corson. Under his direction I undertook a more intensive study of the spiritual significance of the poem, and embodied the result in my thesis for the doctorate, printed in 1894. The throbbing reality of the Franceschini tragedy in the poem raised persistent questioning. How far was it historical fact, how far the imagination of the poet? What were the contents of the book, so vividly described by the poet? Fleeting glimpses of the volume in two subsequent visits to England only served to strengthen my purpose to know Browning's Book in detail. Later on, by the courtesy of Balliol College, I was accorded the privilege of free access to the poet's treasure-trove. The significance of the mastery of Robert Browning and the vital humanity of his great work have grown upon me with each year of this study. I trust that this volume may have something of the same effect upon others, and I feel that it is an important document in any future elaboration of the theory of creative genius in literature.

When it became apparent that the work, if published with due completeness, must be issued by a subsidized press, I turned to the Carnegie Institution of Washington. The generous interest of its officers has enabled me to plan and execute the work without abridgment, and I am indebted to them for unceasing courtesies and assistance in bringing the book to its present issue.

As the book might be approached from various points of view, my purpose in publishing should be definitely stated. It is not to present a study of medieval criminal jurisprudence, though I have reason to believe that the book contains much to repay a student in this field; I have accordingly left without explanation all matters of this nature. Nor is the purpose to elucidate the fact of the Franceschini murder as a matter of

history; for the crime, as history, is of little value, and evidence in the case is but fragmentary. Stricter search of the archives in Arezzo and Rome than Browning could make might reveal further facts, but could not forward the purpose of the present volume. Nor is the purpose linguistic—to study the crabbed Latinity and the colloquial Italian of the volume. I have therefore felt that no glossary was needed, and have omitted etymological and philological annotation. Nor is the purpose to make a literary study of *The Ring and the Book*. Much that is most interesting and most vital in the poem has necessarily been excluded. Still further, although this volume is a source-study it does not present a theory of sources or a study of the more general aspects of the play of creative mind upon raw material. Certain *obiter dicta* of this kind have found natural place in the essay, but I have felt that there was no place for a full discussion of the general theory of sources.

But the present work has been designed primarily to place side by side the crude raw material of the Old Yellow Book and the completed art-product, *The Ring and the Book*, in illustration of the play of the creative mind of Robert Browning in this stupendous work of imagination—one of the most potent and masterful creative undertakings in English poetry since Shakespeare. Whatever makes clearer Browning's use of his material has had a place in the editing of the volume. All else is purely subsidiary, if not extraneous. The final outcome, it is hoped, will be to set in a truer light the mastership of Browning.

The plan of the volume has grown deliberately from the material before the editor, in his endeavor to present fully this extensive poem side by side with its equally extensive source-book, and yet to keep the volume as lucid and as easily usable as possible.

Of first importance is the reproduction of the Book itself, to secure the scholarly world against the possible destruction of the unique copy in the library of Balliol College. Photo-reproduction was determined upon as most accurate and most interesting, even though it displayed the numerous typographical faults of the original. Certain defects due to creases

in the pages of the Book had to be cut in by hand; these are in no case conjectural emendations, but are corrections of a mechanical fault in the old pages. The old ink leaf-numberings in the upper right-hand corner have been clipped in photographing and are supplanted by the more convenient page-numberings in Roman at the bottom of the page.

A full translation is then included as a matter of convenience, and its principles are more fully set forth in a separate translator's preface.

After these two, follows an essay for the general reader and student, who wishes the whole study gathered together in readable form. It is the chief portion of the Book for many a reader of the poem and is therefore made the fuller in its scope. On the other hand, the writer has tried to restrict himself to his own limited aspect of the work in hand, barring himself from many an inviting line of thought concerning other phases of the masterpiece.

The question of annotation was one of the most important in the volume, because of the intricacy and extensiveness of the cross-referencing from such a poem to such a book; for any given fact may be repeated a score of times in book and poem. It therefore seemed best to gather all the annotations in a corpus of topical notes and to refer thereto by superior figures. To the casual reader the annotation may at points seem trivial, but the important truth of the study often finds best illustration in a multitude of such petty details. The subdivision of a larger subject among many notes has often been necessitated by the plan of cross-referencing; and the disadvantages therein are overcome by arranging the notes in groups, so that all annotations on the same or kindred subjects will fall together as far as possible. The use of these notes has been facilitated by the line and subject indexes subjoined.

In the course of so protracted a study, I must acknowledge many a helping hand. To my master, Professor Hiram Corson of the Cornell University, I owe not merely my original interest in the poem, but many years of subsequent counsel and support. The officers of Balliol College have never stinted their endeavor to assist me in making my work as complete as

possible. Professors Joseph S. Shefloe, Hans Froelicher, and William H. Hopkins of my own institution, Professor Eustace Shaw of Johns Hopkins University, and Professor Edwin Post of DePauw University have afforded me invaluable counsel in my labor of translation. The officers of the Peabody Library of Baltimore have aided me at every point with the treasures of that institution. I must also acknowledge the personal interest and encouragement of President D. C. Gilman and Professor J. W. Bright.

CHARLES W. HODELL.

The Woman's College of Baltimore,
March 20, 1908.

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DESCRIPTION OF PLATES

- Portrait of Robert Browning, now hanging in Balliol Commons, Oxford.
Painted by R. Barrett Browning in 1883. The Poet holds the Old
Yellow Book in his hand, and is clad in his robes as honorary fellow.⁵⁵⁶
- Franceschini coat of arms.⁴⁷ A rude water-color sent to the Poet by Barone
Kirkup and pasted on the front inside cover of the Old Yellow Book.
- Portrait of Guido Franceschini. A pen-sketch made on a loose sheet shortly
before the execution of the Murderer. Bought among a bundle of
miscellaneous papers in London, and sent by the finder to the Poet.⁴⁶
- The Death Record of Pompilia in the register of San Lorenzo in Lucina.²⁴

The Old Yellow Book.

Do you see this square old yellow Book, I toss
I' the air, and catch again, and twirl about
By the crumpled vellum covers,—pure crude fact
Secreted from man's life when hearts beat hard,
And brains, high-blooded, ticked two centuries since ?

* * *

Small-quarto size, part print part manuscript :
A book in shape but, really, pure crude fact

* * *

Give it me back ! The thing's restorative
I' the touch and sight.

* * *

Here is it all i' the book at last, as first
There it was all i' the heads and hearts of Rome

* * *

truth thus grasped and gained,—
The book was shut and done with and laid by

The unique collection of pamphlets, which Browning called the "old yellow book," now rests in Balliol College Library, Oxford. This first reproduction of it has been made by the Columbia Planograph Company of Washington from photographic plates taken by the Clarendon Press, Oxford.



XX

(from Siegmar Kirch's
Album)



Arme Franceschini
Famiglia Aretina

Da un MS priorista
Arezzo esistente presso
la famiglia Albergotti

Arezzo luglio 1868

193800.

193800
193800

for the
Honorable
Franklin D. Roosevelt

Robert Browning.

ἔμοι μὲν ὡν Μοῦσα καρτερώ-
-τατος βέλος ἀλκῆ τρέφει.

Posizione
Di tutta la Causa Criminale
Contro
Guido Franceschini Nobile
Aretino, e suoi Sicarij Stati
fatti morire in Roma il di 22.
Febb: 1690.
Il primo con la decollazione gl'altri
quattro di Forca
Romana Homicidiorum

Disputatur an et quando Maritus
possit occidere Vxorem
Adulteram
absque incursu pœne Ord: D.

Indice

- Sentenza della Ruota Criminale di Firenze nella
Cause Criminale Contro Gregorio Giacchellini
Tran: Dimpilia Comparironi moglie di Guido
Francolini e Seguita di Xth, 69 — —
- Consulso a Difesa di T. Francolini et G. Giacinto
Arcangeli Procur^o de procuris in Roma fatto
d'autori La Cong. di Monuf. Governo —
- Consulso di T. Au^o. Desiderio Giretti Am^o de
Pomeria a Difesa del Sud. Francolini, e soci —
- Consulso del Sud. G. Arcangeli a difesa di Luigi
Agostinelli, e Compagni di Delito — —
- Sommario degl'atti fatti a parte del Fisco —
- Consulso M. Tran: Sambu di Fisco, e della
Reud. Caméra Apostolica Procur^o Contro
il Sud. Francolini, e soci di Delito —
- Consulso di T. Gio. Battista Bonini Am^o del
Fisco, e della Reud C. A. Donato i Sud. —
- Sommario degl'atti fatti a parte di Francolinij,
e soci di Delito — — — — —
- Altro Consulso di Sud. S. Arcangeli a favo-
re, a difesa del Sud. — — — — —
- Altro Consulso del Sud. Am^o Spreti a favore
del Sud. — — — — —
- Notizio di fatto, e di rag. fatto, e da^{re} da
autore anonimo — — — — —

Altro sommario fatto a la parte del Proco-
Scrittura d' I. Tambi Provo del Proco contro
i Sudd. Francescoini e socij — — —
Altro Consulso d' I. Gio. Battista Bottini
Anno 1690 il Proco — — — — —
Altro Consulso d' I. Sudd. Contro d' I. Reij —
Riposta alle Sudd. notizie di fatto d' Au-
tore Anonimo — — — — —
Centenza d' I. Mari Amb. Venturini fregol.
in Criminale, che dichiara non constare d'
Abulterio, & costituisce alla pristina fama
La Memoria d' I. Fran. Compilatio Compaginii
moglie di D' I. Francescoini — — — — —
Consulso d' I. chnt. Lamparelli Provo d' I.
Carita' in d' causa — — — — —
Lettera scritta dal S. d' Giacinto Creangeli Pro-
curab. d' I. Comini a M. I. Fran Cencini in Princ^o
nella quale l' amico esser stata depurata la
Sentenza di morte in Roma contro i Reij il 14.2.
Febb. 1698. cioè il Franciscelinij Decapitato, e gli altri
quattro rei impiccati — — — — —
Altro due lettere, che una scritta dal S. Gavero de
Torto, altra dal S. Carlo Chrt. Ugoliniucci al gned.
M. I. Fran Cencini — — — — —
Consulso d' I. chnt. Spretti arfano d' I. Frans-
sini — — — — —

Anno 15. Febbr. 1697. abfasc.⁽ⁿ⁾

Fidej m^o Infratto come nella fisa d^o Progozzi del giorno
che voli proporgono ad. d^o. S. coi santi in p^o d^o degl'
Idd. S. Ant. illa Rotta prima lla Marfia di
Tirone infra gl' altri rigorai ui apparisco sotto
nff. 354. il seguendo di binovo infratto cioè
breve Contro

1. Gregorio di Fran^c: Guilletting non descritto
2. Francesca Comilia Congarini moglie di Giacomo
Franceschini,
3. Francesco di Gio. Borsi. D^o Venerino Garzone d'Agost.
Cato al Canale che d^o a^r Ing^f: contro l'onore della
detrazione intre ipindosi dato in preda a disonore
ti Amori con il Capo Guilletting e con il
G^d Ing^f: il ch^e Servata come si ipso Credere a gar-
fizi da qd^a Città d'Ariano adura de 21. Agosto
1697. n^o Significò il Consulato q^d non ipini signori
ne impediti. 2. Ing^f: d^o a Cenar nel vino ad ore leij
manu il Cannifiro, et appio, o alle^r o ore di noce
in c^o ill' istopa tra d^o Canonico Capponi echi, d^o q^d
Ing^f: Conduciprò via dalla fisa d^o progr. Marito
d^o q^d d^o Ing^f: i^r ipso d^o Lorda d^o Marfia dor-
rato sunderpoco le manu in b^o d^o il Torrone,
d^o pinnabbi all' ostria d^o Canali fuori d^o la Cor-
ta S. Clemente dove quin d^o 3^o con il Calipe^r adue
Canali stava attindendo la loro Venuta entrapo
in P. Calipe^r d^o S. Can. Capponi echi, e d^o a^r Ing^f:
l' iniziarsi da ipo d^o S. S. Ing^f: l' incamminarsi alla

uolto di Perugia conducendolo d. p. in Gallo fino
 a Camoscia e minore strada viaggiavano ad istar
 al med. 3. Ingr. l'uno, et l'altra si discioperò fac-
 ciata: aiuntu di jui d. p. Ingr. con d. f. Ingr. con
 d. Card. Caponsacchi furoriam portato via dal-
 la casa di d. Guido suo marito d'un inglesi
 fio soprato a Chiavò nel paese de' Galzoni di d. suo
 Marito c. 200 = mon. traoro, 3 anf., un filo di ghe
 orronzali da tenero al collo di Valuto, 200. c.
 Un puro pendenti con pietre di diamanti di Valuto
 scudi ottantaquattro = un anello condiamante in
 mezzo di Val. 40 = due perle ad uso di Perineo
 pendenti con suoi spille di Val. 6 = un anello d'oro
 con pietre turrite di Val. 12 = un anello d'oro con
 giubba dinata di Val. 36 = un vero d'ambra di Val.
 5 = un vero di granati di Val. 6. bramirati con
 tokonini d'oro = un puro d'orecchij a naucilla d'oro
 con perla di Val. 16 = due verri di dinere pietre ordinate
 di Val. 4 = una Corona di Corniola di s. Susto con Me-
 daglia di Filoz. d'arg. di Val. 12 = un abito di domingo
 con suo manto e stoffa di color porpo con fiori disegni
 di Val. 40 = un rotanino turchino fiorito di bianco di
 Val. 10 = due bottine da tenere sotto il manto di Val.
 12 = un puro di manichetti di bianco punto di Val. 20 =
 un altro puro di manichetti di manichetti rigirati di Val.
 5 = un collaro di Val. 4 = una Ciappa di Taffetta
 nero da galla con fiocca di nastri di Val. 10 = una
 Cuffia ad uso di drappo stampata di Val. 4 = due

zinale d' Oliuello con suoi mortelli di Val. 3 12 = Un yaro di
 Calz di seta incarnata di Val. 3 14 = Un yaro di calza
 di sana, myaro d' accia bianco, et myaro d' accia turcine
 di Val. 3 5 = Un Imbusto di stampato fabaccato constat
 sottano guarnito di pella bianca, e incarnata di Val.
 3 13 = Un Casaccone di stampato di seta, d' accia turcino, e bianco
 guarnito di pella incarnata, et altri colori di Val.
 3 10 = Un sottanino di stampato turcino, e panno rigato
 a lo lungo di Val. 3 19 = Con sue pigne grigie, e di più co
 lori d' ayoli; Un sottanino stampato di Val. 3 9 = Una
 Cuffia di lustrino di Valero 3 6 = Quattro canicce da
 donna di ganno fino di Val. 3 14 = Un parodi cape
 confetti d' arg. di Val. 3 11 = Molte galanij, i fettuccie di giù
 sotto di Val. 3 14 = Sei bouagliolini fini di Val. 3 7 = Un brac
 chio di seta compigliata di Val. 3 2 = Due parri di quanti
 di Val. 3 4 = Quattro pezzi uole da maso di Val. 3 5 = Una sca
 colina d' argento da sonore il Tabacco con l' Arme di francia
 Franciscellini di Val. 3 16 = Un akro di 3. Guido suo Mar
 ro con scapo, e cintura d' la veratura d' un Capone de
 uo epo tenuta parte dello predd. Robo è il tutto conue
 ntero in opere grigi: Contro la volontà di ques. quando
 f. Ing. Com. d. Can. Caponsacchi apieme con l' ar. Calata
 le mura della Città, si come appurò con i med. adulce
 rao, ed. d. G. dato campo alla fuga di D. R. A. con d. Can.
 nel modo sud. Come onde

Il Comm. ^{lio} i treccio gli di parere di condannare arbitriani
 i f. Ing. in anni Cinque di Confino a Porto fernacio pena
 la Galera, et altri e tanto tempo non operando Confiscurus
 di giorni 15. a comparire e giustificarsi, in p. di condan
 narla in pena dell' incivile vita, et alla pasturaz. Et
 tolco com. giurato, ed il 3^o non molstanto più oltre
 emilaparis libam: dallo Concilio. Ma

La Rota Criminale fe' di sentimento di Condannare il g.
alla Salita a benificio di S. A. S. col disegnato giudicio;
quanto all' p. d' che era pensiero arretrato in un luogo
che fosse la spedizione; Et il 3^o che non avendo
fatto mal alcuno volontario circondò l'Inquisitor
Tornò in d. Nigorio proposito ad. A. B. con
l'affirma del d. 24. Ott. 269.

Sta' bene il parere della Rota.
In quorum

Ego Josephus Viminis I. G. D. et ead in Curia
Rota Criminis Florentis in fidz

Romana Homicidiorum.

III.^{me}, & Reu.^{me} Dñe. NUpserat sinistris
Auibus Domi-
nus Guido Francischini nobili geneie ortus Franciscæ Pom-
pilæ, quam Petrus, & Violantes Coniuges eorum esse filiam
etiam in eminenti Dignitate constituto asseruerant, & brevi
tempore adducta Aretium Viri Patriam vna cum eius Pseudo
Genitoribus cohibita fuit liberiorem vitam ducere, quamvis
prætextu sterilitatis inuisam fuisse commenta sit, vt non obscu-
re depromicatur ex eius depositione i. a. Processu fugæ; ægrefe-
rentibus ipsa, & Coniugibus assuetam viuendi Libertatem
sibi denegari, instillarunt Puellæ, vt conquereretur coram
Reverendissimo Episcopo, quod sibi fuerat propinatum Ve-
nenum à Leuiro, & in actu discensus Coniugum, qui ad Vr-
bem reuersuri erant, deterrima fuatione insuffurarunt, imo
in vim obedientiæ præceperunt, vt proprium Virum occide-
ret, Cognatum, & socrum Veneno perderet, & Domum incen-
dio conflagraret, ac ex inde (post tamen eorum discensum, ne viderentur malum dedisse Consilium) ope Amasij
eligidæ mæditatam fugam versus Vrbem ad effectum perdu-
ceret, vt ex vna ex eius Epistolis in eodem Processu clarè
elicitur.

Domum reuersi falsi Genitores, declarando Franciscam non
fuisse ab eis genitam, sed conceptam ex incerto Patre per vi-
lissimam Lotiicem, instituerunt Iudicium coram A.C. Tho-
mato super nullitate constitutionis Dotis.

Decrescente in dies charitate Franciscæ in eius Virum, & au-
gente se Amore in quemdam Ecclesiasticum, Res eo perdu-
cta est, vt statuta nocte, qui somno Vir opprimebatur, ve-
niam non data opera, & medica ninc extero non procurato
fugam è Domo Viri non sine pæcuniatum furro, & in societate
eiusdem Amasij Romam petendo aggressa sit; mæstissi-
mo Viro inseguente non procul ab Vrbe fuit carcerata, con-
struoque interim Processu, Amasius pro Adulterio fuit in
Civitatem Veturia relegatus, & ipia in Conservatorio deposita,
sed urgente Vtero prægnante ad Domum Petri, & Violantis
regressa partum, vñiam non conceptum Adulterino coitu,
enixa, est, quod verecundiam, & dolorem auxit in viro, & ira

A

diù

diù excitata adeò percreuit, vt vndique ammisso honore apud probos viros in ludibrium digito ostenderetur, præcipue in patria, vbi ingenuis hominibus summoperè cordi est bona æxistimatio; Quo circa Ira in fuorem, dolor in desperationem ità infâlicem virum adegerunt, vt satius ducens mori, quam inter honestos ignominiosè vivere, obcæcata mente iter arripuit ad Vrbem quatuor socijs septus, & nocte secunda labentis mensis Ianuarij specie dandi literam Amasij Relegati properasse prætenditur ad illorum Domum, cuius Ianua patefacta ad nomen Relegati, iugulasse Violantem, & Petrum, & confodisse Franciscam tot vulneribus, vt post paucos dies obierit.

Eadem desperatione durante improvidus, & hæbes animus modum se in tutum ponendi non suggessit, sed ijsdem Homini bus stipatus per viam consularē recto tramite ad patriam reuersurus in stragulo quiescens in quadam Caupona ab in sequentibus Birruarijs cum socijs carceratus remansit.

Magnum quidem facinus, sed maximopere commiserandum, & excusatione dignissimum, cui sauerissima leges indulgent, & mitissimè se gerunt erga Maritos notam Infamia delentes sanguine adulteratum Vxorū l. Si Adulterium cum incaſtu 38 S. Imperatores ff. ad leg. Iul. de Adulter. l. Marito 24. ff. eod. leg. Gracchus Cœod. leg. 1. §. Fin. ff. ad leg. Cornel. de Sycar. l. Si quis in graui 3. §. Si tamē Maritus ff. ad Syllan. clar. §. Homicidium num. 49. Giurh. conf. 86. num. 9. Berlich. præf. conclus. §. 4. conclus. 27. num. 152. Caball. resol. crim. cas. 300. num. 5. Farinacc. quæfl. 121. num. 63.

Quod idem sanctum fuerat in legibus Athæniensium, & solonis, hoc est sapientissimorum Legislatorum, & quod magis est in illo rudi sæculo Romuli leg. 15. ibi -- Adultery conuictam vir, & Cognati uti volent necanto -- vt refert ibi Baldwin. Piccard. in §. Item lex Iulia de Adulterijs num. 3. Inflis. de public. Iudic., & similiiter in legibus 12. Tabul., vt refert Aul. Gell. noč. Aet. lib. 10. cap. 23. Tiraquell. ad leg. Connub. 15. num. 13. Couar. in Epitom. De cœrat. lib. 4. part. 2. cap. 7. S. 7. in princ. & num. 1. Amesena de potest. in se ipsum cap. 13. num. 12. in fin., Mairthaus. de re crim. controu. 11. num. 8.

Et præmisso non posse dubitari de Adulterio Vxoris, nedum ex fuga simultanea cum Amasio per longum tramitem continua, Rimin. Iun. conf. 274. num. 31. Menocch. conf. 31. numero

mero 22. Farinacc. quest. 136. num. 184. Cruf. de Indic. part. 2.
cap. 7. num. 27.

Ex litteris Amatorijs mutuò missis, quæ sine naufragio in Proces-
su fuga legi non possunt Hostien. in cap. Præterea num. 5. vers. de
Adminiculis, & ibi lo: Andr. num. 4. Ancharan. num. 3. de Testib-
but, Paris conf. 54. num. 64. lib. 4. Rimin. lun. dicto conf. 274. nu-
mero 9. Farinacc. dicta quest. 136. num. 126. Cruf. de Indic. dicta
part. 2. cap. 7. num. 7.

Ex Ingressu eiusdem Amasij Clandestino in Domum eiusdem
tempore suspecto in Procesu fuga 107 & seq. Grat. conf. 50. ante
numerum primum, & num. 4. lib. 2. Gret. conf. 413. num. 35. vers.
Idem deponit, lo: Bapt. Ferretil. conf. 168. num p. & seqq & num. 4.
Bursatt. conf. 69. num. 9. Rot. diuers. decisi. 95. num. 7. part. 2.

Ex osculis in eadem fngā impiatis fol. 100. iuxta illud.

Vifus, & alloquium, tactus, post oscula factum.

& probant Abb. in cap. Terrio loco num. 4. vers. vel ipsam osculan-
tem extra de præsumpti. Hostien. in dicto cap. Præterea num. 5. vers.
De Adminiculis etiam extra de Testib. & ibi lo: Andr. num. 4.
Ancharan. num. 3. Ant. de Butr. num. 9. ad fin. vers. Alminicula
autem.

Ex condormitione in eadem Cauponæ cella 49. Paris. conf. 160
num. 60. lib. 4. vers. & vltierius optimè Ioseph. Fontanella confit.
crim. diuers. 97 num. 29. lib. 2. in paruis, Soccin. lun. couf. 32. nu-
mero 16. lib. 2. lo: Baptista Ferretil. dicto conf. 168. num. 1. in fin. &
num. 81. Menocch. de Præsumpt. Præsumpt. 41. num. 11.

Sed etiam ex Sententia Iudicis, qui condamnauit Amasium pro
cognitione Carnali Ipsijs, quæ notoriam inducit Cap. ve-
stra de cohabiti Cleric. & Mulier cap. fin. tit. eod. & in terminis
viu. decisi. 297. num. 12. & 13. lib. 1.

Vltra quod hic non agitur de probatione Adulterii ad irrogan-
dam Pñnam, sed ad effectum excusandi Occisorem, & ad
illius defensionem, quo casu leuiores probationes exhibera-
rent ut monet Matheu. de re Crimin. d. Controu. 11. num. 25.

Quibus præhabitibus non obstat aliquorum opinio afferentium
non esse excusabilem Maritum à Pñna ordinatio occidentem
Vxorem Adulteram ex interuallo, ex quo prædicta Iuxta lo-
quuntur de Vxore reperta in flagitio, & sic incontinenti pro-
inde non debent extendi ad Vxori cedium ex interuallo pa-
tratum, ex quo non debeant relaxari habenæ hominibus ad,
delinquendum, & ad sibi Ius dicendum Farinacc. quest. 121.

num. 118. Dominus Rinald. in suis obser. Crim. cap. 2. §. 4. nn.
156. & cap. 7. in Rubr. num. 117

Nam pratequamquod *Farinaccius* non firmat Conclusionem sed nimis dubium se præbet ibi. -- Res apud me est valde dubia. nam pro mitigatione *Pena Causa honoris*, & iustus dolor, qui semper Cor præmit, multum stringit -- quæ verba in nostro proposito bene ponderat *Mattheu. de re Crimin. Controv.* 12. sub num. 22. & insuper concludunt rām *Farinaccius*, quām *Dominus Rinaldus Pñam posse moderari consulo Principe.*

Aduerii humiliter supplico. quod prædicta Iura, quæ videntur require Repeitionem in fraganti, ut aliqui opinati sunt, id non statuunt ad excusandum Maritum morum ad occidendum ex repētino Iræ impetu, & inconsulto illius calore, sed ne quilibet suspicione Adulterii plerūmque vana ad occidendum irruant Vxores sāpē innocentes. proinde depræhensio in Crimine à legibus requisita non refertur, nec intelligitur de repetitione in actu Turpitudinis. sed refertur ad probationem Adulterii, ne leuibus suspicionibus Vxor tradatur vltimo suppicio, vbi tameo non est dubitabile Adulterium, ad evitandam maximam Penam nullum discrimen reperitur inter occidentem incontinenti & ex interuallo, ut in punto Donde ex grā. viden. Consult. 97. num. 17.

Quoties enim Vxor sit de Adulterio conuicta, vel sit Adultera manifesta, semper dicitur in Crimine depræhensia Glos. in cap. ex litterarum 4. de eo qui dux. in Matrim. qua poll. per Adult. in verb. depræhensam ibi. Ide si conuictam sola enim depræhensio non sufficeret ad hoc, ut separaretur, licet sufficiat ad infamiam - Glos. in l. 1. sub verbo depræhensus C. vbi Senat. vel Clarif. Bartol. in l. 1. num. 1. C. de Petit. Bon. sublat. lib. 10. 10. de Plat. in Rubric. C. eod. num. 1. Caball. Resol. Crim d. Cas. 300. num. 26. Bertazzol. Consil. Crim. 42. num. 10. Mattheu. de Re Crim. d. Centrou. 12. num. 5. optime Sanfelix. decis 337. nn. 91. & seqq. Et de Vxore conuicta loquitur d. lex. Rosuli.

Et in rei veritate rationes adductæ per sectantes contrarium opinionem sunt nimis debiles. Homicidium enim ex causa Honoris commissum quoiescunque commitatur, semper dicitur incontinenti commissum, quia honoris laesio semper ante eos sedet, & assiduis, ac incessantibus stimulis præmendo, ad sui reparationem sollicitat, & impellit Giurb. conf 86. num.

18. & 19. *Balthas. de Angel. in Addit. ad Gizzarel. decis. 18.*
num. 5. Pras. Respons. Grim. 25. num. 5. in fin. Sanfeliz. d. de-
cis. 337. num. 50.

Relaxatio Habenarum Maritis ad sibi ius dicendum esset solu-
modo considerabilis, si adhuc vigeret lex Repudii, hoc enim
casu non esset permittendum Maritis ius sibi dicere pro repa-
ratione sui honoris, nam alia Via satis sibi consultum esset
facultate scilicet dimittendi, & repudiandi Vxorem pollutam
& sic causam Turpitudinis, imò ipsam ignominiam procul a
se abidere possent; At postquam Divina fauente gratia genti-
lis Cæcitas eliminata est, & agnitione fuit Matrimonium esse
perpetuum, & indissoluibile, sunt miseratione dignissimi, qui
preclusa sibi omni alia via, honori suo litando Cruore Adul-
terarum Vxorut maculas detergunt *Petr. Erod. Rer. Iudicat.*
lib. 8. tit. 1. de Adulter. cap. 1. vbi postquam de huiusmodi re
differuit iuxta normam iuris Romanorum in fine addit ibi Spe
enim sublata secundi Matrimonii, quandiu Adultera superficies
erit, durius existimamus iustissimum dolorem nisi tanto tempore
extingui, Itaque qui Diuertio non terminatur terminatur Homicidio
(inquis Augustinus) quod non licet, ut licet, hoc est ut
alter aducatur, altera occidatur.

Fateor esse laudabile refrenare Maritorū Audaciam, ne in pro-
pria Causa ius sibi dicant; quia possunt decipi, sed laudabi-
lius profecto esset cohibere talacitatem Vxoribus; si enim mo-
destè se gererent, & honestè viuerent, non utique Viros im-
pellerent ad huiusmodi fere dixerim necessaria facinora, ne-
que negare possumus ex ignominia Adulterio illata non exas-
perari, Vesanos reddi, & iustissimum dolorem in corde exci-
tari, qui omnem alium sine comparatione præcellit, maio-
rem proinde commiserationem meretur iuxta illud Satyrici,

*Exigit iste Dolor plus quam lex uilla Dolori
concessit.*

Quod bene agnouit Papinianus in l. 6 Adulterium cum incestu S.
Imperatores ff. ad l. 1. l. 1. de adulter. ibi - Cum sit difficilem
iustum dolorem temperare l. Gracibus Cod. eod. Ex quibus Do-
ctores inferunt iustum dolorem lenire pñnam etiam in præ-
meditatis facinoribus, quia iustus dolor non facie resedit,
nec tractu temporis vires ammitit, sed sicut Infamia assiduo
cor pungit, & quo durat Infamia ipse durat, imò augetur

Afflct. super Condit. Regn. Neap. lib. 3. de pena Vxorum iuxta adulterio Rub. 46. num. 1. in fin. & num. 2. Facchin. cons. 36. num. 11. lib. 2. Caball. resol. crim. d. Cas. 300. num. 66.

Eò intensius impellit, quo magis impune, vt ita dicam, Vxores matrimonia fædant, & totius Domus honorem coinquunt; Antiquo tempore, vigente lege Iulia Vxores maritalis Thalamum fædantes ultimum supplicium subibant l. quamvis la. 2. C. ad leg. Iul. de adulter. l. transfigere C. de transact. S. item lex Iulia de adulteris Instit. de public. indic. Prout sanctum fuerat in Sacris Litteris, Vxores enim adulteræ lapidibus obruebantur Genes. cap. 38. Levit. cap. 20. vers. 10. Deuteronomi: cap. 23. vers. 22. Ezechiel. cap. 16.

Solarium ex publica vindicta sumptum sedabat dolorem, infamiam delebat, & primæcæ libertati Coniux restitutus, noua sed honesta inducta Vxore, in decore filios suscipiebat; At modo, mala nostra tempestire; ob deplorabilem sceleris frequentiam vbiique locorum obsoleto Sacrarum Legum rigore, cum agatur mitissimè contra Vxores turpitè viventes, infælicitissima esset Maritorum conditio, si aut vivendum esset perpetuè cum infamia, aut illius abolitio, morte Vxoris mediata, expianda esset ultimo supplicio, vt bene considerat Matthæus de re Crim. d. controu. 12. num. 27.

Quocirca vbi queritur, ve Maritus totaliter impunis euadat, tunc requiritur, quod Vxor occidatur in actu turpitudinis reperta at vbi quæstio sit, an Maritus Vxoricida causa honoris impulsus mitius puniatur, nihil interest, an incontinenti, vel ex interuello coniugem occidat, Matthæus de re Crim. d. controu. 12. num. 16.

Nec talis Sententia caret fundamento in ipso Iure Ciilli Romanorum, Martianus enim in l. Diuus Adrianus ff. ad l. Pompe. de Parricid. assertit Patrem, qui Filium in venatione necaverat ex quo nouercam polluerat adulterio, fuisse deportatum, nec tamen illum reperiat in ipso flagitio, sed in venatione, hoc est interuenientibus aëribus amicitia, dissimulata iniuria proinde fuit punitus, sed extra ordinem, quia non Iure Patris, sed potius more Latronis filium intertegit, vnde desumere possumus non fuisse punibilem occisionem, sed occisionis modum, quemadmodum deducimus ex Bartol. ibi, & Cuiac. in ff. tit. 40. num. 5. in Addit. litt. E. optimè Dadian. tractat. Criminis. lib. 9. cap. 8. num. 11. Berthazzoli confilio

356. num. 18. Farinac. conf. 66. num. 5. Dondau. consult. 97.
num. 5.

Præterea est consideratione dignissimum, quod pro tutela sui corporis impunè licet Aduersarium occidere, sed incontinēti, & in ipso actu aggressionis, non autem ex interuallo, quia per occisionem Occisoris non reparatur vita illius, qui ab ipso occisus est, proinde quidquid post primum homicidium sequitur, tendit ad vindictam legibus exosam, & odiosam, quia quoquo modo lœditur Iurisdictio iudicii, auferendo facultatem puplice vindicandi homicidium, sed si per mortem homicidæ posset in vitam reuocari occisus ab eo, non puto esse dubitabile, quia licet et cœlibet dictum interfectorum interficere, quia non esset vltio, sed mera defensio tendens ad recuperationem Vitæ ademptæ; At ubi sumus inoffensione, & iniuria non tangere Personam Inuriati, sicuti permisum est furtum passo occidere furem pro recuperandis bonis ablatis, etiam ex interuallo, quoties præclusa sit omnis alia via illa recuperandi Farinac. quæst. 125. num. 216. Ità pati formiter omni tempore permitti debet offenso in sua existimatione occidere Inuriantem, nam non dicitur ylciisci iniuriam, sed refarcire honorem suum labefactatum, qui nullo alio modo reparari potest, ut ratiocinatur Dondau. d. consult. 97. num. 15. Et 16. Et idem sentit Sanfalic. d. decis. 337. num. 47. ad 49. Et seq. Et num. 87.

Vltra quod, ut dixi, quando agitur de defensione vitæ, agitur de actu instantaneo, ideoque Ira ex ea concepta deber aliquando residere, iuxta monitum D. Pauli ad Ephes. 4. ibi Sol non occidas super iracundiam vestram - Sed quando sumus in offensione honorem lœdente, haec non est momentanea, sed habet tractum successivum, immo lapsu temporis eo maior evadit, quo plus vilipenditur iniuriatus, ideo quotiēcumque sequatur homicidium, semper dicitur immedietè commissum, Sanfelic. d. decis. 337. num. 50. ultra alios citatos.

Proinde his, & aliis rationibus frati commanori assentientium Calculo Doctores firmarunt, Maritum occidentem Vxorem Adulteram ex intetuallo, & non repertam in auctib⁹ venereis puniri quidem, sed mitius, & extra ordinem, Bart. in l. Diu⁹ us ff. ad l. Pomp. de Parricid. Bald. conf. 312. num. 5. lib. 4. Alex. conf. 140. num. 9. lib. 2. Afflit. in Coſtit. Regn⁹ Si Marius num. 1. Rub. 46. lib. 3. Tuscb. pract. conclus. litt. A. conclus.

143. num. 31. *Ruin.* conf. 2. num. 7. lib. 3. *Honded.* conf. 104. num. 30. vol. 1. *Bertaz.* zol. conf. Crim. 42. per tot. 10. *Franc.* de Pont. 98. num. 8. & seq. lib. 1. *Marta* vot. Pif. 206. per totum *Giarb.* conf. 86. num. 19. & 21. *Viu.* decis 241. num. 26. & 27. *Grammat.* decis 13. num. 6. *Gizzarell.* decis. 8. num. 4. & 5. *Sanfelic.* dec 264. n. 5. & d. dec. 337. per totū *Mattheu de re Crim.* d. controv. 12. n. 21. & per tot. *Thor.* *Compend.* decis. *Verb.* occidens *Vxorem ante med. verf.* alias sex intervallo part 3. sec 2.

Et idem practicatum fuisse in diversis Orbis Tribunalibus testatur Caball. diffo cas: 300. num. 45. & alios casus recentes similiter decisos Caluin. de aquitatem lib. 1. cap. 58. num. 18. 30. & 31. *Cyriac.* qui loquitur in grauioribus terminis controv. 105. in fin. *Mattheu* plures etiam casus decisos refert dicta controv. 12. in fin. & alios quamplurimos adducunt. *Doctores mox citati.*

Quæ benignior sententia facilius amplectenda est, ut authumo, quia faciem, de quo agitur, etiam iuxta sensum hisci non fert secum circumstantias præferentes tam rigorosam pænam. Non quidem assumptio lociorum adhibitorum in homicidijs, quia licet potuit vti opera comitum, vt tuius potuisset morte vxoris suo honori consulere *Castren.* conf. 277. lib. 2. *Soccin.* *Iun.* conf. 34. num. 12. lib. 2. *Paris.* conf. 154. num. 7. & 8. verf. *Qut-* nimo, & num. 16. lib. 4. *Cappell.* conf. crim. 4. sub. num. 13. & per innumerous Caball. d. cas: 300. num. 59.

Neque delictum in altiorem specie evanescit ex quo socios conduxit pacta mercede, quia licet potest maritus, quod magis est, & sine comparatione admirabilius alijs demandare homicidium vxoris adulteri mediante pœcunia, vt inconcusse fit warunt Bald. in l. *Gracbus* num. 5. C. ad l. *Iul.* de Adulter. Afflict. in confit. Regni lib. 1. Rubr. 8. de cultu Pacis num. 8: *Mazzol.* conf. 57. num. 18. *Carer.* Pract. crim. 8. circa itaque num. 5. sub verf. ad instar boſtis verf. tamen Baldus fol. mibi 192. & 8. excusat. num. 13. verf. in tanta fol. mibi 196. *Alex.* Reuden. var. resolut. cap. 7. num. 5. verf. & mediante assassinio, *Pascal.* de Patr. Potest. lib. 1. cap. 5. num. 23. verf. qni dicit hanc vindictam, *Viu.* decis 197. num. 25. lib. 1. *Mart.* vot. Pifau. 206. num. 9. Gramm. super confit. Regn. simaritus n. 12. lib. 3. *Cappell.* conf. crim. 73. n. 11. verf. sed hoc respondendum, *Caluin.* de equitate lib. 1. capit. 58. num. 30.

Si-

militèr nil turbat , quod Dominus Guido in ipso a^{et} fug^e
potuerit vxorem , & Adulterum occidere repertos in caupo-
na Castri noui , sed potius voluerit eos carcerari querens pu-
niri iure medio , & non de facto . Quoniam negamus potuisse
tunc verumq; interficere , quia erat solus , nec poterat sine vite
discrimine eos aggredi , quia Amasius est viribus pollens , nun-
quam timidus , & nimis ad resistendum promptus ; dum ex
dicto vnius testis in Processu fuga vocatur — Scapezza collo --
nec est credibile , nisi fuisset animosus , & interitus aggressum
esse tam grande facinus , ausum fuisse participem esse fug^e ,
& sociare elatibus viri profugam vxorem ; Et apertius deslu-
mitur ab una ex eius epistolis , in qua hortando Franciscam ,
vt in Lagenis somniferum medicamen admiseret ad oppri-
mendum somno virum , & domesticos , subiungit , quod qua-
tenus præsensissent , aperiret quidem lanuam , nam vel mor-
tem cum ipsa subiturus esset , vel ab eorum manibus eam
eripuissest , quæ indicant audaciam , & fortitudinem : Et licet
vxor esset femina , hoc est imbellis , & timida , nihilominus
Francisca nimis Procax , & audax sive ob odium erga maritum ,
sive ob iram conceptam ex carceratione Amasij Glau-
diu strinxit contra virum coram Birruarjs eam carceraturis ,
& ne ulterius progrederetur , necesse fuit , vt ab eius manibus
ab adstante euelleretur , unde non potuit ante carcerationem
illorum quod meditatus fuerat , & sibi licebat , ad effectum
perducere ; quia erat solus , & viribus impar ; Deinde ad carce-
res adducta , & postmodum in conservatorio deposita , impos-
sibile ei fuit suum honorem vindicare , sed è Monasterio ex-
gressa , & ad domum Petri , & Violantis redacta , primum , quo
potuit yltus est , prouide habetur ac si in fraganti , & incon-
tinenti eam interfecisset , Sanfalic dicta decif. 337. num. 58. in
fir. 59. & 60. vbi quamvis maritus potuisset eam incontinenti
occidere , & non interfecit , sed dissimulando quam citius po-
tuit ab ignominia nece vxoris se exemit , & num. 90. circa si-
nem , Giurb.d. cons. 86. num. 19. & 21. vbi quia non agitur de
iniuria personali , sed reali , vt supra dictum est .

Curavit eius capturam , & instetit , vt puniretur , ne adulteria ,
& Flagitia continuaret , & impotens ad aliud peragendum ,
quod confusio mentis , rabies inualida , & verecundia sua sit
inconsultò peregit , non vt sibi ius adimere proprijs manibus
recuperare honorem ammissum ; Querelauit quidem , sed quia

OC-

occidere non potuit, nec ex illius carceratione , & punitione
fuisset detersa ignominia , & abolita infamia , immo cum post
illius carcerationem magis arceretur a cetero nobilium, semper
acerbior reddebatur iniuria, & feruentius stimulabat ad re-
parandam suam existimationem , præcipue augebatur animi
mæror præsentiendo fuisse regrestam in Domum Petri, & Vio-
lantis, qui declarauerant non esse eorum filiam, sed inhonestæ
mulieris, vnde augebatur iniuria permanendo in domo sus-
pecta, ut paulo infra dicetur, & proinde eadem causa militat tamen
post egredium, e Monasterio , quam ante carcerationem , &
instantias factas per Dominum Guidonem .

Parum etiam refert, quod Francisca permaneret in domo Vio-
lantis de consensu fratris dicti Domini Guidonis assignata pro-
tuto carcere; Nam quicquid sit an de consensu ipsius Domini
Guidonis.edu&a esset a Monasterio, de quo nullum ver-
bum habemus in Processu, potuit id dissimilare , vt editum
habere potuisse ad eam occidentam , ut honor, eius reinteg-
raretur, nec huiusmodi dissimulatio delictum auxisset, præ-
cipue ad pœnam ordinariam, cum certum ut absque illius in-
cursu posse vxorem adulterio pollutam necari, quamvis mo-
do maior modo minor pœna ingeratur, quo maior, vel minor
prodicio intercesserit, vt in Senatu Matritensi praticari restatur
Mattheu.de re crim.d.controu.12.num.29. & 30.

Nec mæretur considerari circustantialia loci dati pro Carcere ,
quasi quod læsa fuerit Principis Custodia, quia, præterquam
quod non dicitur esse in Custodia, qui detineatur in aliquo lo-
co cum fideiussione de non egrediendo Angel. in l. qui in Car-
cerem ff. de eo quod met. cauf. Capyc. decif. 154. num. 4. Farinacc.
quest. 30. num. 38. & est text. non obscurus in l. succurritur in
fin. ff. ex quib. Cauf. maior. ibi - Custodiā autem solum publicam
accipi Labeo putat. & ibi glossa in verb. Putat.

Obiectum funditus corruit, quia circumstantia huiusmodi loci
crimen non exasperat, quoties committatur a Prouocato , &
ad propulsionem Iniuriæ, vt in fortioribus terminis de de-
licto commissio intra Carceres Mar. Mut. decif. 36. Ricc. decif.
245. pari. 3. Merlin. Pignattell. controu. Forens. cap. 66. num. 28.
& 29. Centur. prima .

Denum ob Homicidia Petri, & Violantis ex supra deductis au-
geri Poenam non posse credimus, quia eadem causa Honoris,
que

quæ impulit Dominum Guidonem, coegerit etiam perdere di-
eos coniuges. Parcant interim Defunctorum Cineres, si ea,
quæ supra reculi, & quæ dicturus sum, videantur turbare eo-
rum Pacem, quia non Odij fomes, nec Iræ impulsus, quo-
rum causas procùl habeo, suggesterunt, sed Defensionis ne-
cessitas non uno titulo assump̄ta compellit omne, quod ad
finem exoptatum conducit, in medium proferre.

Dixi, &c. ut puto, non immerito Dominum Inquisitum proflyse-
re ad utriusque Internicionem motum simpliciter iniuria, &
de directò lèdente suam existimationem; Post enim paucos
mensis à die Matrimonij contracti cum Francisca, quam esse
eorum Filiam profecti fuerant, non erubuerunt declarare non
esse talēm; Hinc est inevitabile Dilemma; Aut verè, & reali-
tèr fuerat ab ipsis genita, & cogenit sacerdi, negando post-
modum Filiationem, impressisse maximam Injuriam Honori,
& existimationi Domini Inquisiti, & elicitor magnum odium,
& Liuor in eis contra eundem, quem, ut Ignominia affi-
rent, veluti despousasset Filiam vilissimam, & dishonestæ Mu-
lieris, non curarunt de honestate propriam Filiam; Hoc vnum
est, quicumque agnoscit Dominum Guidonem, apprehen-
det Matrimonio se copulasse cum Puella ne dum disparis,
sed etiam infimam, & dishonestam conditionis, quod summoperè
lèdit existimationem totius domus.

Aut in veritate Francisca procreata fuit ab incerto Patre, & in
lucem edita per dishonestam Lotricem, & non poterit negari
non fuisse maiori iniuria affectum inurente notam infamiam,
tum respectu Natalium, tum quia solent Filii non diffimiles
esse Matribus Cephal.conf. 140.num.30. Farinacc.conf.24.num.
15. & qua s. 136 num. 99. Boss. in Pract. tit. de Plur. violent. nu.
68. in fin. Et est text. in cap. s. gens Anglorum 56. dist. ibi de tali
commixtione meretricium, estimandum est, degeneres Populos, &
Ignobiles, & furens libidine - Et utinam experientia nos non
docuisse!

Creditur Infelix vir nubere Filia Petri, & Violantis ex legitimo
Matrimonio natæ, & nihilominus opera, & fallacia dictorum
coniugum nupsit Pueram deplorata conditionis, concep-
ta ex dishonesta Matre fornicario coitu; Hinc delumi fas est,
cuius qualitatis essent coniuges prædicti, qui, ut fraudarent
legitimè vocatos ad Fideicommissum partum vilissimum
suppon-

supposuerunt , immemores Reos factos esse ultimi supplicij
L. prima. C. ad leg. Cornel. de falsi Marßlan. l. si mulierem num. 3.
ff. ad leg. Cornel. de Sycar. lo. de Anan. in cap. Ad falsarium num.
11. iv. fin. de Crim. falsi. Bessin Praet. tit. de Partu supposito num.
1. Boer. decis. 82. n. num. 8. in fin. Afflitt. decis. 404. num. 17. in fin.
vers. Item in eo Peguer. decis. 80. num. 8.

Non erit igitur difficile creditu quæ Francisca in Epistola sup-
posuit suo Leuiro , quod prædicti coniuges , & si ipsa bene
tractaretur instabant quotidiè , ut virum , Cognatum , & suocrum
veneno perderet , & incendio Domum consumeret , quæ licet
pessima sint , adhuc peius consilium , etiam in vim obedientię
dederunt , ut scilicet post eorum discessum ab Arcadio capra-
ret Amasiam , ipsoque Comite à Domo viri diuertendo , se
conferret ad Vrbem , prout veluti obedientissima Filia nimis
quippè prompta paruit mandatis . Quis igitur negabit , non
esse tribuendum huiusmodi Ausum temerarium , ex quo no-
torium factum fuit obbrobrium diffusum toti Domui Domi-
ni Inquisiti , persuasionibus impijs dicatorum Coniugem? Nec
fuit difficile persuadere Puerilę ea , ad quæ propensa erat in-
stinctu originario , & exemplo Matris .

Ad quid autem tamen anxie desiderarent Coniuges regressum
Francisca ad eorum Domum , non est meum diuinare , non ta-
mè possum mihi persuadere , quod mouerentur ex mera
Charitate , ut scilicet se eriperet à malis tractamentis , dum
fatetur Francisca in dicta Epistola ducere vitam tranquillam ,
virum , & Domesticos cum ea optime agere , & ea , quæ Re-
uerendissimo Episcopo supposuit fuisse falsò commenta-
dictis coniugibus . Scio insuper , quod si vir noctum habens
Adulterium Vxoris , eamque Domi retineat , notam , & Poe-
nam Lænocinij cuitare non potest L. 2. §. Lenocinij , l. Marii
Lenocinium ff. ad leg. Iul. de Adulter. l. 2. Cod. eod. Manoch de
Arbitrar. cas. 5 34. num. 23. Farinacc. que est. 144. num. 94. & 98. Si
ergo , ut dicti coniuges exaggerabant , Francisca non erat eo-
rum Filia , cur eam post detectum manifestè Adulterium in
domum tenerissime receperunt , & , ut ita dicam , in finū con-
souerunt nedum usque ad æditionem Partus , sed etiam usque
ad mortem ? Et utinam ibi non perdurassent Amores cum
Relegato ! dum ad simplex nomen illius , percepto à pulsante
Januam , quod redditurus erat Epistolam dicti Relegati ,
statim

statim patet **causa** fuit Ianua, **causus** fuit aditus Marito ad recuperandum Honorem, nam si dicti Coniuges male sensisse Adulterium Franciscæ horruisse et quidem sine dubio nomen Adulteri, & omnem astruxissent viam mutuæ correspondientiæ; Ex quibus evidentissimè patet, continuasse causam Honoris læsi in Domino Inquisito, imò nouas causas emerisse eiusdem speciei, quia omnes tendebant ad deturpandam eius existimationem.

Nec quicquam facit, quod plures Causas odij recenseat Dominus Inquisitus tam contra Franciscam, quam contra Coniuges, quia si bene perpendantur, omnes coincidunt, & rediguntur ad originalem Causam, scilicet Honoris Iesu. Vt cumque sit, quandò Causæ sunt inter se compatibilis, adhuc urgentiori, & pinguiori actus sequetus tribuendus esset Rot. cor. san. mem. Alex. VIII. dec. 168. num. 5. & in puncto, quod concurrentibus pluribus causis, Homicidium referatur, & tribuitur causa Honoris, & non alijs *Materbaude re crim. d. contro. 11. num. 38. & 39.*

Quam obrem puto, quemlibet Cordatum Hominem debere sati iustissimam causam habuisse occidendi prædictos Coniuges, & iustissimum dolorem fuisse excitatum, atque in dies auctum humana consideratione, quod non nupsisset illi, nisi deceptus fuisset a Vafermis Coniugibus; Et prædictis additur, quod aut Partus æditus fuerat conceptus ex Adultero, ut D. Inquisitus credere poterat, nesciens in fuga Vxorem esse prægnantem, & non possumus negare, ex partu prædicto non fuisse novam causam excitatam, sive Priorem renouatam; Aut genitus fuerat à legitimo Patre, & quis negabit, ab illius occultatione irasci denuò non debuisse ammissione Filij? Ex vtraque causa maximus dolor conceptus, cui est vis maxima, excusationem mereatur, adeòut quamplurima Delicta atrocia iusti doloris impulsu perpetrata à quauis poena impunita remanserint, vt notant Alex. ab Alex. in Summ. 4. par. q. 86. membr. 3. art. 1., Tiraquell. de Pæn. temperan. Caus. 1. num. 16. in fin. Quod etiam innuit texti in d.l. Gracchus C. ad l. Iul. de Adulter. ibi - Tamèn quia nox, & dolor iustus factum eius relevant. potest in exilium dari - Harprect. in §. Item lex Cornel. de Sycar. n. 212. Inst. de Publ. Iudic. Abbas in cap. olim num. 6. de Rescript. Angel. in l. si Adulterium §. Imperatores nu. 2. ff. ad leg. Iul. de Adulter. ; Rimini. Iun. conf. 136. sub nu. 6. inter conf. Grim diuers. tom. primo. Ber-

Bertazzol.conf.243.num.7. & conf.286.num.6. & conf. 505.nu.
30., Giurb.conf.86 nu 8.Verf. Et ubi iusto dolore Prat. Respons.
25.num.41. Conciol. Alleg.87. num.4.

Et non semel in contingentia facti euaserunt Impunes qui iusto dolore morti apposuerunt manus etiam in Innocentes ; Mulier enim quedam Smirnea Virum , & Filium ex eo conceptum interficerat ex quo Vir perdiderat filium suum primi matrimonij, accusata deinde apud Dolabellam Proconsulem , neque duabus cædibus contaminatam liberare, neque iusto dolore impulsam condemnare voluit, sed remisit ad Areopagum Sapientissimorum Iudicium Cætum, vbi, cognito de Causa , responsum fuit, ut ipsa , & Accusator post centum Annos redirent, & sic duplici Parricidio Rea, quamvis etiam Innocentem occidisset , vnde quaque evasit Impunis , vt refert Valer. Max.Dictor.factor.memorab.lib.8. cap.1. de Public. Iudic. vers. Eadem hesitatione, Tiraquell.de Pœn.temperan.d.Gaus.1.nu.17. circa med. Menoch.de Arbitrar. cas.356.num.60. Cyriac.contr. 105.num.39. Gramm.det.5.num.23.

Similiter Vxor, quæ mandauerat Homicidium Viri ob iustum dolorem ex denegatione debiti matrimonialis fuit Pœcunia. ria mulcta punita, & ad temporalem permanentiam in Monasterio, vt testatur Cyriac.d Controu. 105. in fin.

Hæc sane procederent , quoties Dominus Inquisitus esset de prædictis confessus, vel legitime coniunctus, quorum neutrum affirmari potest, multò igitur magis admittenda sunt , dum facetur dedisse dumtaxat ordinem ad incidentam faciem Vxoris, vel ad strixandum; & si Mandatarij mandatum excelsissent, non vriue de excessu teneretur Decian. tract.crim. lib. 9.cap.36 nu.6.Verf. Et Ego unum defendi, Clar.S. fin. quest.89. num.5. Menoch.de Arbitrar. cas.352. num.3. Farinacc. qu.135. num.156.

Socij , & Comites illum nominant , & profitentur cædibus interuenisse ; sed præterquamquod Fiscus prætendit in quam plurimis veritatem occultasse, non patitur Aequitas, vt eorum Depositione scindantur , & pro parte tantum accipiantur, cum mendax in uno, talis censeatur in omnibus ; Exhiberaret ad admendam eis omnem Fidem , quod in Tortura coram ipso maculam non purgauerint Scacc.de Iudic.lib.prima cap.86.num.56.Farinacc.q.43.num.134. & seqq.Cartar. Pract. In-

*Interrog. Reor. lib. 4. cap. 1. num. 14. , Handed. conf. 100. num. 2, &
16. lib. 1. Caball. Resol. crim. Cas. 85. num. 11.*

Licuit ad defensam iustius Nobilis Virti currenti. ut aiunt, Calamo hæc deducere præ temporis angustia, quæ non passa est alia fundamenta cumulare, quæ paruo labore, & forsan non inutilièr coaceruari poterant, quāmuis credam exhuberanter satisfactum esse obiectionibus, quæ pro parte Fisci excitari possent.

Quare &c.

H. de Arcangelis Pauperum Procur.

*Illustriſ. & Reuerendiss. Domino
GVBERNATORE
In Criminalibus
Romana Homicidiorum.*

P R O

Domino Guidone Francischino
Carcerato.

C O N T R A

Fiscum .

Memoriale Facti , & Iuris .

Romæ , Typis Reu. Cam.Apost. 1698.

Romana Homicidiorum.

Illustriss.^{me}, & Reu.^{me} Dñe. E^X Pro-
cessu fab-
ricato in hoc eodem Tribunali, & ab ipsomet D.meo Ven-
turino Iudice præsentis Causæ satis , superque constat de
Adulterio commisso per Franciscam Pompiliam Vxorem D.
Guidonis Francischini Nobilis Aretini cùm Canonico Ca-
poniacchio,cùm quo conspirantibus eiusdem Franciscæ Pom-
piliæ Genitoribus, quamvis hic in vrbe degentibus , tradito
priùs somnifero eidem Domino Guidoni, totique eius Fa-
miliae noctis tempore eadem aufugit è Ciuitate Aretij Vr-
bem versus , ita , vt memoratus Canonicus fuerit hac de
Causa Relegatus in Ciuitate Vetula cùm expressione facta in
Decreto dictæ Condemnationis Cognitionis Carnalis eius-
dem mulieris ; Constat etiàm de dicto Adulterio ex aliis in-
facto deducendis per Dominum meum Procuratorem Pau-
perum, ita , vt nullus remaneat hæsitandi locus supèr hoc ,
quia potius prædictum Adulterium dici possit notorium hic
in Vrbe, in Patria dicti D.Guidonis , & in vniuersa Hetru-
ria .

Jannini:
Hoc stante rute asserere possumus, quod quamvis idem D.Gui-
do esset confessus de nece Inficta dictæ sua Vxori, cùm com-
plicitate, & Auxilio Blasii Augustinelli de Ciuitate Plebis ,
Dominici Gambassini de Florentia , Francisci Pasquini de
Castro montis Acuti , & Alexandri Baldeschi Tiphernatis ;
non propterea veniret puniendus Poena ordinaria , sed mi-
tiori, ex Rescripto Divi Pij relato ab Vlpiano I.C. in l.s Adul-
terium 38. S. Imperatores ff. ad leg. Corac. de Adulter. & à Mar-
tiano pariter I.C. in l.prima S. fin ff. ad l.Iul.de Sicar. Vtrobiqui
enim dicitur, quod humili loco natus in exilium perpetuum
datur,nobilis vero ad tempus relegatur; Ignoscitur siquidem
Marito tunc iustum Dolorem exequenti , vt suppetit idem
Vulpian. in l.s quis in grani. S. si quis moriens in fine ff. ad Sen.
Consul. Syllan. Difficillimum cùm sit illum temperare, vt ha-
betur in dicta l. si adulterium cùm Incepta 38. S. Imperatores, ff.
ad leg. Iul. de Adulter.

Et ita conciliando Antoniom leg. nec in ea 22. ff. eodem Tit.
benè declarat ibidem glossa in verbo omnem , & in dicta l.prima

A

S.fin.

§ fin.v. Reforripit, vers. sed videtur, ff. ad leg. Cornel. de Sicar. &
 in dicta l. si quis in grani. §. si quis moriens, verbo Ignoscitur. ff.
 ad S.C. Sillantan. & tenuerunt Doctores communissimè, si-
 gnante Alberic. Rayner. & ceteri scribentes in l. Gracchus, Cod.
 ad leg. Iul. de Adulter. Angel. in dicta l. si Adulterium cum Ince-
 pu. §. Imperatores, num. primo, & 2. ff. eodem, Paris. cons. 154.
 num. primo, & 2. lib. 4. Giurb. consl. 86. num. 9. Soccin. Ian. cons.
 34. num. 5. & seqq. lib. 2. Bertazzol. consl. Crimin. 42. nu. primo,
 Tiraq. leg. Connab. 12. sub num. 3. Angel. de Malef. in verbo
 Che hai adulterato la mia Donna, vers. aduertas tamen, pagina
 mibi 118. à tergo, Neuizan Silu. Nuptial. lib. p. verbo non est
 nubendum, num. 93. & seqq. Gomez. ad leg. Tauri 80. numer. 51.
 vers. vnum tamen est, Decianus et. Crimin. lib. 9. cap. 15. nu. 38.
 Menoch. de Arbitr. cas. 356. numer. 89. Folter. praet. Crim. verb.
 dentur Capitula, quod suffocauit uxorem, num. 63. fol. 280. Fa-
 rinacc. queß. 121. num. 59. & 60. latissimè Caball. Resol. Crimin.
 cas 300. num. 5. & pluribus seqq. Mattheu de re Crimin. controv.
 11 num. 8. Dondè Consult. 97. num. 1. & 2. Sanfalic. decis. 337.
 num. 9. dextart. plures alios allegans decisione Sardin. 57. per
 tot.

Quamquam adhuc, ut mitigationi dictæ Poëtæ locus esset, ne-
 cessè quidem non habemus, quod Adulterium uxoris fuisset,
 prout est, concludenter probatum; sufficeret enim, quod
 versaremur in simplici suspicione gloss. in l. Divus Adrianus in
 figurazione Casus, ibi- qui filium occidit, quem cum Nouerca
 iacere credebat, & erat fortè verum, deportatur in Insulam.
 ff. ad leg. Pompeiam de Parricid. Innoc. in cap. si verò sub num. 1.
 vers nec laicus dubitaret, & vers. vel ipse laicus de hoc probabili-
 ter dubitaret de sent. ex comm. Aretin. consl. 85. num. 55. Gram-
 matic. consl. 18. num. 5. & consl. 29. num. 2. Farinacc. consl. 35. num.
 22. idem Grammat. decis. 5. num. 10. Vbi de eo, qui se iactau-
 rat velle carnaliter cognoscere sororem occidentis, quod iu-
 stam suspicionem, & Timorem amissionis honoris dicitur in-
 cussisse ad evitandam Poenam ordinariam homicidii, opti-
 mè Dondè. dicta consul. 8. 97. num. 5.

Nec verum est, id, quod aliqui Doctores affirmant, quod neces-
 sarium sit, quod Marius uxorem deprehendat in Adulterio,
 illamque incontinenti occidat, in quibus Terminis inquiunt
 loqui supradictas leges, scilicet autem si ex Intervallo, ut per
 Doctores allegatos per Farinacc. qui illos sequi videtur dicta
 quæst.

gn. 12 r. à num. 111. usque ad 118. & conf. 141. per tot. vol. 2.
Contraria enim opinio est verior, communior, & in praxi tenenda, vt benè consuluit Marfil. conf. 105. num. 31. & seqq. vbi pro defensione cuiusdam Nobilis, qui ex Intervallo occiderat alium, qui se despousauerat per verba de futuro cùm eius sorore, illamque tenuerat per tres meases, & deinde refutauerat, propter quod magna fuerat irrogata Injuria, & Ignominia eius familiae, & toti Cognitioni, adducit supradictas leges loquentes de Marito occidente Vxorem suam Adulteram, Bersazzol. dicto conf. 42. num. 8. & seqq. usque in finem, vbi ponit Casum in eo, qui vxorem Adulteram interficerat, & postea ad sui defensionem probauerat Adulterium ex gen. i. nata eiusdem Vxoris Confessione, & *Claudius filius in Addit.* testatur dictus Occisorem fuisse à Prætore Mirandulae Bannatum ad tempus, & postea lapsis aliquibus mensibus à Domino Duce Mirandulae revocatum, *I. Franc. de Ponte conf. 98. nn.* 27. & seqq. Vol. 1. repetit. subitus deo. Sanfel. 337. sub nn. 87. & seqq. Afflitt. super Conf. Reg. d. lib. 3. Rubr. 46 sub n. 1. vbi relata Constitutione Regni - Si Maritus - concedente impunitatem Marito occidenti Vxorem, & adulteram dummodò ambos in ipso actu adulterij, & sineulla mora occidat, inquit, quod si non concurrant huicmodi requisita, Maritus excusatur à fatto, non autem à toto, & sic mitius punitur, & num. 3. rationem reddit, quia vbi cumque quis iusto dolore motus commisit delictum, pena debet aliquantulum temperari, iuxta pradictum Texium in l. si quis ingraui §. si quis moriens, vers. maritus ff. ad Sen. Conf. Sylanian. & alios, quos ibidem allegat, sequitur Carer. pract. Crim. §. 9. excusatur maritus nn. 10. fol. 170. Caball. d. ref. 300. num. 24. & duob. seqq. vbi: ac num. 36. testatur ita vidisse obseruati in factri contingentia, Cabrer. de meta lib. 2. cap. 45. num. 13. vers. quæ quidem sententia Bellon. de potest. eor. quæ fenni in continentia cap. 20. nnn. 6. vbi quod ita statutum fuit per Senatum Mediolani Matth. de re Crim. controv. 12. à num. 7. usque ad 17. & num. 21. vbi quod ita obseruant eundem ferè tribunalia Mundi, & numeris seqq. usque in finem, & de Reginin. Reg. Valent. cap. 8. §. 8. num. 65. vbi quod ita fuit iudicatum per Regium Senatum, & num. seqq. usque ad 70. vbi sub num. 69. adducit pulchra verba Thedorici apud Cassiodor. lib. 1. variar. epistol. 37. ibi - Quis enim ferat hominem ad leges trahere, qui matrimonio natus

est Iura violare? Feris iustitiam et copulam suam extrema con-
certatione defēdere, dum omnibus est animātib⁹ inimicū, quod
naturali lege dannatur; Vidimus Tauros faminas suas cornuali
concertatione defēdere, Arietes pro suis onibus capitaliter insuare
equos adiunctas sibi feminas Colaphis, ac mortibus vindicare, ita
pro copulatis sibi animes ponunt, qui verecundia non mouentur.
Homo autem quemadmodum patiatur adulterium inultum relin-
quere, quod ad eternū sunt dedecus cognoscitur commissus &
ideō si oblatā petitionis minimē veritate fraudaris, & genialis
Thori maculam deprabens adulterij sanguine diluisti, nec sub
pretextu Cruenta mentis, sed causa pudoris intendis ab exilio,
quod sibi constat inflidum, te praecepsim alienum, quoniam pro
amore pudicitia porrigit ferrum maritis non est leges calcare,
sed condere - Nonar. in Summ. Bullar. par. 1. Comment. 72. sub
num. 81. vers. ex quo adulterio, Baldaxar de Angelis in addit.
ad Gizzarel. decif. 18. num. 5. Carol. Anton. de Luc. in addit.
ad Defranch. decif. 678. num. 8. ad fin. vers. maritus, vel pater
Donde. d. consult. 97. à num 10. usque in finem vbi in vers. &
hic mea interpretatio; inquit, quod ista interpretatio mani-
festè probatur authoritate à Gloss. in cap. ex littererum 4.
de eo, qui dux. in matrim. quam polluti per adulterium, cum
enī in Textu dicantur illa verba vxorem tuam in adulterio
deprabens Glos. in V deprehensam, explicat, id est con-
uictam, Mart. vot. seu decif. 206. per totam vbi num. 4. quod
ista opinio est multum iusta, æqua, & communiter tenet, Ma-
ria dec. Sicilia 61. num. 11. & 12. & in Calce ponit resolute
Magnæ Curiæ d. Regni, per quam maritus fuit damnatus ad
etremes per septennium, idque attenta circumstantia, quod
vocari fecerat Vxorem per filium, extra mœnia Civitatis. ibi q;
illam interfecerat, & eius Cadauer postea repertum fuerat,
comedi à canibus Dexar. decif. Sardin. 5. per totam, vbi in fin-
ne testatu r̄ sic fuisse decilsum in Sacro Regio Prætorio, con-
demnando maritum dumtaxat in exilium, Sanfalc. decif.
337. num. 12. & 13. vbi quod imò concurrente Qualitate
Personæ tuerunt à Regio Consilio Neapolis absoluti quidam
nobiles luenes, qui occiderunt uxores ex interuallo, & ex
vehementi suspicione Adulterij, ad quorum fauorem scripse-
runt doctores primæ classis, quorum allegationes idem Au-
thor ponit subr̄ dictam suam decisionem, & quamvis ali-
qui ipsorum fuerint damnati ad remigandum, inquit, quod
hoc

noc processit ex causa abscissionis genitalium de facto fecutæ, quia nempè id facientes reputantur. inimici naturæ latissimè Panimoll. decif. 86. n. 20. & pluribus seqq. Caldero decif. 42. n. 16. & 17. vbi quamvis ipse in antecedentibus. o.n. in nobis contraria inclinarent opinionem, viso Mattheu supra por nos allegato cum illius opinione pertransit.

Et ratio est euidentissima, quia huiusmodi iniuria recepta per viros ingenuos, præsertim nobiles, eisdem semper est præfens, temporeque cor premit, & vrget ad ulciendum ob amissum honorem recuperandū, vt benè animaduercit Giarb. d. conf. 86. num. 19. Bellon. de potest corum, qua fiunt incontin. de elo cap. 20. num. 6. Carol. Ant. de Luca in addit. ad Franch. dicta decif. 678. num. 8. ad finem, vers. maritus, vel Pater, Sanfelic. d. decif. 337. scù melius in prima allegat. subiis dictam decif. num. 50. Panimoll. d. dec. 86. num. 21. & seqq.

Quemadmodum semper, & vbi cumque agitur de homicidio commisso ex causa honoris non esse locum poenæ ordinariæ, sed eam arbitrio Iudicis mitigandam, etiam, quod illud sequutum fuerit ex interuallo, & post multum tempus ex supradicta ratione firmant, & decisum referunt Grammatic. decif. 5. & 23. Gizzarell. decif. 18. num. 4. vbi quod ita semper fuit iudicatum per Sacrum Consilium Neapolitanum, & quod hæc opinio semper fuit à maioribus nostris recepta & num. 5. ibi que Baldax. de Angel. num. 1. & seqq. Prat. respons. crim. 25. num. 15. in fin. Adden. ad Pascal. de virib. Patr. potest. par. 3. cap. 6. S. congruit pag. 343. Vermigl. conf. 37. num. 11. Rot. Genue. vot. 32. sub num. 5. vers. & est adeò privilegiata, post Censal. ad leg. un. Codic. si quis Imperat. maledix. Campas. resolut. 16. nu. 5. vbi quod ita fuit iudicatum per Magnam Cutiam Vicariæ quamvis ageretur de homicidio post bicauum, & proditoriè commisso à duobus fratribus in personam Adulteræ eorum Sororis Consobrinæ, Cyriac. controverf. 104. num. 73. vbi de homicidio commisso per vxorem in personam mariti ex causa, quod retinebat Concubinam, & eius Honori insidiabatur, & dicit, quod iustus dolor cum habeat tractum successuum ratione ultimi doloris, ultio semperdici debet sequuta incontinenti. Polic. de Reg. Andien. tom. 2. tit. 10. cap. 7. nu. 30.

Suppetit quoque alia ratio à Doctoribus considerata, quia scilicet iniuria, per quam honor lreditur, non est Personalis, sed realis, quæ propter ea propulsari potest quādocumque etiam

post lapsum longissimi temporis, ut in nostris terminis *Giurb.*
d.conf.86.num.20. & *21.lo.* *Francisc.* de *Pont.* *dicto conf.98.num.*
29 & seq. lib. i. repetit. *subtus d. decis.* *Sanfelic.* *337.* *sub num.87.*
vers. nam cum fiat, & n. seq. *Cabrer.* de *met.* *d.lib.2.cap.45.* *vers.*
pungit pro hac sententia, *Marta d.vot.* seu *decis.206.num.10.* *Pa-*
nitoll. *d. decis.86.num.27.* & seqq.

Cum igitur habeamus tot Clasicos doctores viuissimis ratio-
nibus firmantes homicidium commissum etiam ex interuallo in Personam vxoris, & alterius cuiuscumque Personæ ex
causa honoris non esse puniendum poena ordinaria, sed mi-
tiori, & vterius dicti Doctores testentur sic fuisse indicatum
in Tribunalibus, in quibus ipsi verlati fuerunt; nil profectò
curandum est de contraria opinione *Farinacc.* *d. quest.121.* &
d.conf.141. quia èvidenter dignoscimus ipsum loqui contrà
communem, & in Tribunalibus magis receptam opinionem
Valenzuel. *conf.139.num.25.* & *26.* *Rot.* *recent.* *decis.464.num.8.*
part.5. *tom.2.*

Vltetius animaduertendo, quod idem Author in *conf.66.* *num.5.*
contrarium tenet, præsertim se fundans in dispositione *Tex-*
tus in leg. *Diuus Adrianus ff.* ad *leg.* *Pomp.* de *Parricid.* vbi Pater
occidens filium non repertum in actu venereo cum nouerca,
sed in venatione, & in Siluis, & sic interuallo non mortis, sed
de portation s poena punitur, cuius Textus dispositionem pa-
riter pro Corroboratione huius nostræ opinionis adducunt
platiæ ex præitatis Doctoribus, considerando et a nos
quod idem Author in *dicta quest.121.* dubius habet, ut in *num.*
118. vbi fatetur, quod pro hac nostra opinione multum strin-
git lupræ relata ratio, quod causa honoris, & iustus dolor
semper cor premit, ideoque ait in contingentia facti seruari
debere dispositionem *Textus in leg.* non *puto ff.* de *Iure Fisci*
vbi Modestinus Iuris Consultus inquit se non putare delin-
quere eum, qui in dubijs quæstionibus contra Fiscum Fac-
lè responderit, & *Farin.* sic dicentem refert, & sequitur in
bis terminis *D.Raynal.* *parie 2.* *cap.2.* *S.4.* *num.156.*

Cauendum autem est ab eo, quod assertit idem *Farinacc.* *d. conf.*
141. *in fine,* quod scilicet sua opinio fuisse, ut ipse percipere
potuit magis approbata à Sacra Consulta, quia cum, ut ipse
met fatur, dubitatio tunc non fuerit proposita, ipse non po-
terat diuinare quid cœnturum fuisse si proposita fuisse, &
revera sapientissimi PP. dicti supremi confessus cum illius
oppi-

opinione non transeunt , sed contrariam nobis fauorabilem seruant , vt ex resolutionibus , quæ emanant in dies ; ita enim seruatum fuit die vigesima quinta Martij 1672. cum Carolo Falerno qui damnatus fuit in extraordinaria pro homicidio patrato in personam Francisci Dominici ; quem inuenit egredientem ex Ecclesia, ad quam ne accederet premonuerat suspicatus, quod Vxorem ad sectaretur, simili modo cum Carolo Matarazzo sub die 15. Augusti 1673. qui vxorem interfecit ex ea rusticana suspicione , quod Partus supputata ratione mensium suæ absentia esset suspectus de non legitimitate , cum tamen ea suspicio in facto non adeo veritati responderet, & in Iure sit res prorsus fallax , & humano intellectui imperuia ad text. in l. 1. S. 14. ff. de agnosc. & alend. lib. & ibi scribentes , & optimè ratiocinatur Rot. in Auenionen. dotationis 3. Martij 1692. § sed cum hodiè coram R.P.D. meo Caprara,

Sicuti etiam in homicidio ex insidijs, cum Archibusata commisso in personam Thomæ Bouini a Francisco Mattuccio de monte S. Ioannis persona vilissima ex Causa simpliciter tentatæ pudicitiae eius sororis, de quo constabat per duos Testes de auditu ab ipso occiso die 4. Septembbris 1692. pñnam tremum perpetuarum , in quam sub die 12. Iulij antecedentis dictus Mattucciüs ex indiciis urgentissimis condemnatus fuerat moderata est Sac. Consulta Poneute bo. mem. R. P. D. Ratta.

Iure itaque merito idem Farinacc. ex professo confutatur, & reiicitur à Matth. de Re Crimin. d. resol. 12. num. 22. & à Dexarr. d. dec. 5. praesertim num. 16.

Et hæc nostra opinio eò facilius recipienda venit , ponderando, quod maritus indignatur plùs de adulterio Vxor, quam si filius occidatur plenè Io: Lopez in Rubr. de donat. inter virum, & Vxor. §. 78. num. 3. cum seq. Boff. de Coit. damn. & punibil. num. 46. Cabal. resol. crimin. cas. 15. num. 9. & dict. cas. 300. num. 10. Nevær. in Summ. Bullar. dicta par. i commentar. 72. sub num. 81. Mut. d. dec. 61. num. 1. quinimò, & magis, quam si stupetur filia, Nevizan. Silv. unptial. li. 1. verb. non est gubernandam num. 30. Paschal. de vir. patr. potest par. 1. cap. 5. num. 34. vers. & de hoc Crimine, Nevær. d. commentar. 72. sub d. num. 81. adeò, quod si maritus de adulterio Vxoris non conqueratur, presumitur Leno , vt prosequitur Pascal. ubi

proximè; Adulterium siquidem Vxoris offendit non solum maritum, sed totam cognitionem denigrat, & maculat, vt inquit Roman. conf. 45 l. num. 10. Boff. d. tit. de coit. damn. & punibil. n. 44. Nouar. d. Commentar 72. sub d. n. 81. quod contingit in præsentia casu manibus palpatum est; Dominus enim Abbas Paulus frater D. Guidonis coactus fuit non solum urbem deserere, in qua summa cùm laude vixerat per multos annos, sed transgreedi Italiam, quia nimis per huiusmodi adulterium summum Dedecus consequitus fuerat, adeò, vt cùm Iudicialeiter prosequeretur illius Causam ipsi accidit, quod mouerit risum, & cachinnos ferè in omnibus etiam sensatis, & cordatis viris; non tamen dicam in iplismis Iudicibus, quemadmodum in his etiam contingere consuevit Teste Castr. conf. 277. sub numero 3. vers. sed nec Iudices lib. 2. sequitur Neuizan. Sylu. nuptial. lib. 1. verb. non est nubendum sub num. 94. Cabal. dict. cas. 300. num. 17. Martb. dicta contr. 13 num. 25. Boer. dec. 298. num. 1. Calderò d. dec. 42. num. 6.

Praediis nullatenus obstatet, si, citrè veri praividicium, admitteremus (prout Fiscus prætendit) quod idem D. Guido Vxorem occidisset cùm Complicitate, & auxilio prædictorum Blasij, Dominici, Francisci, & Alexandri adhuc effigium coadunatorum, quia id ei facere licuisset, vt commodius, & tutius de illa vindictam sumeret Bald. in cap. ultim. num. 6. circa finem, de Iuram Calumnia, Castrrens. in leg. Refectio- nis num. 4. Cod. Comm. Predior. Ias. in leg. 1:5. Usufructarias, num. 5. vers. secundò notabiliter limita ff. de oper. nou. nunciat. Castrrens. conf. 277. num. 3. lib. 2. Cepoll. conf. Crimin. 4. num. 13. vers. secundò similiter, & num. 14., & 15. vbi refert id fuisse Iudicatum per totam Curiam Veronæ, & num. 16. & seq. vbi quod ista est veritas, & conf. 73. num. 11., & de seruit. Urban. predior cap. 23. num. 11., vbi pariter, quod ita fuit iudicatum, & quod hoc est menti tenendum, Rolan. conf. 34. num. 8. & sequentibus, usque ad 18. lib. 2. Soccin. iun. conf. 34. num. 12. & seq. vol. 2. Paris. conf. 154. num. 7. vol. 4. Ie: Franc. de Pont. conf. 98. num. 31., & seqq. lib. 1. quod est repetitum in Calce dicta decisionis Sanfelic. 337. num. 89., & seq. Marsil. Angular. 175. per tot. Ie: de Arnon. singular. 85. pariter per tot. Cassan. ad Consues. Burg. Rub. 5. §. 1. tit. defrentes n. 43. pag. mihi 815. Ne- uizan. Sylu. nuptial. lib. 1. ver. non est nubendum n. 98. Gomez ad leg. Tauri 80. num. 62. Caball. resol. criminal. d. cas. 300. num. 58. cum seq. & num. 75. Mart. vot. seu decis. 206. num. 9. Garz de- cis. 71. per tot.

Et

Et quidem etiam quod praedictos homines conduxisset median-
te pecunia, Bald. in leg. Gracibus sub num. 5. Afflct. super con-
stit. Regni lib. 1. rubric. 8. num. 30. & lib. 3. rubric. 46. num. 3.
& 4. & vitrobius testatur se ita practicari vidisse, Carer. pra-
et. criminal. in 3. tract. de homicid. & assassin. §. 8. excusatur
Pater num. 1. 3. fol. 169., & §. 9. excusatur Maritus num. 1. 1.
fol. 170. à tergo Mars. dicto vot. seu decis. 2. 06. cod. num. 9. cùm
alijs allegatis infra §. Et in fortioribus.

Non autem Causa honoris cessat respectu homicidiorum dicto-
rum Soceri, & socrus, flante enim conspiratione habita in
Adulterio per filiam commisso, ipsi fuerunt in Causa iniuriz.,
& ignominiz., quæ ex eo resulterunt in perniciem honoris, &
exstimationis Domini Guidonis Generi, & respectu Mari-
ti, propterea sicuti ipsi de luce puniri debuissent eadem pena
qua Principalis iuxta Textus expressos in leg. Qui domum, ubi
Gloss. & in leg. Et si Amicis, cùm leg. Sequenti ff. ad leg. Iul. de
Adulter. & in leg. 1. §. Fin. ff. de extraordinar. Crimin. Nati. conf.
15 1. per tot. vol. 1., Pascal. de vir. Patr. potest. part. 2. cap. 10. nu-
mero 20. Ita, & sufficiente Causam dederunt eidem Domi-
no Guidoni de illis vlciscendi.

Addito insuper, quod, vt in facto probabitur, & assertuit in suis
Constitutis ipsemet D. Guido, ipsi aliud præjudicium intule-
runt exstimationi eiusdem mediante lite Civili per ipsos in-
tentata suppositionis partus dictæ Franciscæ Pompilizæ, euil-
gando etiam, & distribuendo non solum hic in Urbe, sed
etiam in Patria ipsius mordacissimas scripturas contestas,
quoniam etiam impressas super eadem lite, ita, vt negari non
possit, quoniam Dominus Guido ex hoc etiam iustum dolorem, &
Prouocationem conceperit, & iustum Causam habuerit sumen-
di vindictam ad Textum in cap. 1. de jjs, qui fil. occid. vbi Ale-
xander Tertius rescriptit Episcopo Tornacensi, quod mulie-
rem, quæ filium interfecrat eo, quod sibi à Marito exproba-
retur illum esse conceptum ex Adulterio, detrueret in Mo-
nasterium. In delictis enim, in quibus etiam Iracundia non
excusat, adhuc delinquens in iracundia, quæ ortum habuit
ex iusto dolore venit aliqualiter excusandus, vt ex prædicto
Textu notat ibidem Gonzal. num. 2. & firmat Menoch. de Ar-
bitr. cas. 356. num. 59.

Absque eo, quod ex his Fiscus prætendere possit incursum poe-
næ in Alexandrina constitutione apposita, quia delictum in
præ-

præsenti non potest dici commissum in odium litis , in qua D. Guido sententiam fauorablem ab A. C. Thomaſo reportauerat, canonizatam etiam a supremo Tribunal signaturæ iustitiae, sed potius ex iusto dolore proueniente ex dicta Ignominia eidem resultante ex dicta Partus suppositione, atque ex prouocatione ab eisdemmet occisis facta mediante, dicta euulgatione, & distributione scripturarum , & conspiratione predicta ad fugam eius Vxoris ; cum scilicet dicta constitutio non intret, vbi dolus non interuenit, sed ex Parte offensi aliqua præcessit prouocatione, vt latissimè firmat *Farnace. conf. 67. p. 7. t. 10.* vbi in calce ponit per extensum decisio nem Sacre Rotæ.

Et in omnem casum , cum in D. Guidone duæ concurserent Causæ ad delinquendum ; Altera scilicet prædictæ litis , & Altera honoris læsi ob dictam litem intentatam , & conspiratam fugam, ex quo adulterium processit , attendenda est illa honoris, quæ est gravior , & consequenter etiam magis proportionata delicto *Honded. conf. 105. num. 60. lib. 1. ver. 1. 11. n. 15. Rot. Genuen. vob. 11. n. 5. & 6. post Geſual. ad l. unic. C. si quis Imper. maledixer. optimè in his terminis Matth. de re crimin. conir. 11. num. 79.*

Similitè nec aggrauari debet pena respectu loci, quia honoris defensio est adeò iusta , adeoque est iusta Ira , animique motus ex ea proueniens, ut de eo non sit habenda ratio , ut ex *Ioanne Francisc. del Carrillo decisi 271. n. 51 & 55. loquente de Insultu facto in Carcere tenet Merlin. Pignatell. controuer. for. cap. 66. num. 27. & 28. vbi num. 29.* Conclusionem comprobat ex eo, quod maior Reverentia Ecclesiis , & alijs locis, Deo consecratis, & in quibus Rex Regum , & dominus dominantium assistit per essentiam , & nihilominus delinquens in eis ex iusta Ira , & dolore excusatur, afferens ita uno ore fateri Canonistas omnes in cap. fin. de Immunit. Eccles. & alios per eum ibi allegatos .

Facilius igitur Conclusio procedere debet in Casu nostro , vbi D. Franciscus non existebat in Carceribus formalibus, sed habebat domum pro Carcere sub fideiūſione scutorum Tricentorum de non discedendo, qui enim dedit fideiūſtores, & Iurauit de non recedendo nec in vinculis, nec in Custodia est L. prima ff. de Custod. Reor. Angel. in l. qui in Carcerem num. 2. ff. quod

quod met. Caus. Luc. de Pen. in l. si quis Decurio , num.6. Cod. de Decurion. lib. 10. Vbi quod sit diversa inter se in vinculis custodiri , & fideiussoribus committi Grammas. conf. 5 1. num. 8. & 9. Farinacc. quest. 30. numer. 58. vbi quod verbum Custodiae magis strictè intelligendum est, quam verbum vinculorum per Textum in l. Succurritur in fine, ibi -- Custodiā autēm solum publicam accipi Labeo putas -- Et ibi - gloss. in verbo putas. ff. ex quibus Caus. maiores &c. Cyrill. in Summ. Crimin. Rubr. 12. de Custod. Reor. §. 1. num. 1. vers. Vinculorum ergo appellatio latius accipitur.

Si igitur D. Guido , quatenus etiā confessus fuisset se cùm complicitate , & Auxilio prædictorum occidisse propriam Vxorem, sacerdotum, & socrum ex prædictis haud puniendus esset poena ordinaria, multò facilius id allequi debemus attempo, quod ipse solummodo faslus fuit dedisse mandatum, ut Doctorum utar verbis, ad sfrisiandum dictam suam Vxorem tantum, non enim hoc casu ipse tenetur de morte lecuta diqz suæ Vxorū, & aliorum Dec. conf. 622. num. 4. vbi quod mandans in isto casu, solum puniri potest per modum culpx, pro qua nec pena corporalis imponi potest, Grammatic conf. 20. num. 1. & 2. ver. migl. conf. 16. per tot: signanter num. 20. Petr. a plaz. epitom. delictor. lib. 1. cap. 15. num. 1. vers. idem etiam dicendum si fieret mandatum ad sfrisiandum, Menoch. de Arbitr. cas. 352. num. 3. & 4. Farinac. quest. 135. num. 156.

Quatenus verò filius huiusmodi confessioni qualificatæ acquiescere nolit, sed dum inquisitum torquere prætendat probanda vltiori prætensa veritate, in tali casu Tortura erit simplex, non enim agi potest de tormento vigilæ, quia obstat constitutio sa. m. Pauli V. edita super reformatione Tribunaliū urbisi; quæ habetur inter alias constitutiones eiusdem in ordine la 71. Tit. de Iudic. Criminalib. qui est §. 10. n. 30. tom. 3. Bullar. pag. 198. per quam sanctum fuit huiusmodi tormentum inferri non posse, nisi copulatiuè concurrant illa duo, videlicet quod delictum sit atrocissimum, quodq; Reus: sit gravatus indicij vrgentissimis, & testantus Spad. conf. 114. n. 4. lib. 1. Farinacc. qu. 38. num. 71. Locatel. qq. Iudic. crimin. inspect. 1. num. 44. Guazzin. def. 30. cap. 21. num. 13. vers. & hic Eusebius lavdatisimæ memorie decelsor meus in sua alleg. impressa apud Passeriu. in cap. 1. sub n. 70. in principio, de homicid. in 6.

Deli-

Delictum autem atrocissimum dicitur dumtaxat illud , pro quo
pæna gravior, quæ simplicis mortis imponenda venit, veluti
scissionis in frusta, combustionis, & limosum, *Parinac.* qu. 18.
num. 68. *Garpzon.* præf. crimin. par. 3. qu. 102. num. 62. *Sca-*
narol. de vijs Carcer. lib. 2. S. 6. cap. 4. num. 14. pag. 291. *Cam-*
pan. resol. 2. num. 28. *Polic.* de Reg. audien. tom. I. tit. 3. cap. 2.
num. 62. *D. Rainald.* obseru. par. 3. cap. 84. S. 6. num. 4 Quod
mortis Genus , vti Ignominiosum , & Irrogans Intamiam-
signanter non habet locum in Personis nobilibus, leg. moris
est 9. S. sed enim ff. de Pen. Gloss. in l. desertorem 3. S. torquen-
tur, ibique Bartol. ff. de Re milis. Idem Bartol. in l. capitalium-
S ferni casiff. de Pan. *Cassan.* in Catal. Glor. mundi par. 8. con-
sider. 33. vers. hinc etiam est. *Farin.* quæst. 9. 8. num. 98. *Cowarr.*
variar. lib. 2. cap. 9. num. 4. multò igitur minus, quod non
agitur hic de Pæna mortis, quæ in præsenti non intrat ex su-
periùs firmatis, & in punto ad effectum, ut huiusmodi deli-
ctum non dicatur qualificatum aduertit *Gabriel.* cons. 187.
num. 12. & 13. lib. 2.

Quæ dicta sunt fauore D. Guidonis Principalis militantis etiam
fauore , prædicatorum Blasii, Dominici, Francisci, & Alexan-
dri, quia nec ipsi puniri possunt poena ordinaria, sed ea dum-
taxat, qua dictus Principalis Bald. in l. *Graceus*, num. 5. Cod. ad
leg. *Iul.* de Adulter. vbi ponit Casum de statuо præcipiente,
quod Banitus pro certo. Crimine non possit occidi nisi ab
Inimico, qui fecit eum banniri, & dicit quod si Inimicus fe-
cerit eum assassinari, Assassinus non punitur , & Rationem
reddit, quia quod fuit licitum in Persona mandantis, repu-
tatur licitum in Persona mandatarii, & dicit esse Casū expres-
sum in d. lege, *Castrens.* in l. *Refectionis* n. 4. Cod. Commun. Pra-
dior., vbi quod si ex forma statuto licitum est alicui sumere
vindictam de eo, qui ipsum offendit, licitum est etiam con-
gregare Amicos, qui ipsum iuuent ad hoc , & quod illi non
puniuntur, sicut nec ipse Principalis : & dicit hoc idem,
tenuisse Jacob. *Butrigar.* & in l. *raptores* num. 6. vers. Sed quid si
permittit C. de Episc. & Cleric. vbi in eiusdem terminis, & cons.
277. sub na. 3. vers. Ideo parendum fuit eis , vbi in terminis ma-
riti, qui coadunauerat homines ad bastonandum eum , qui
cum vellet offendere pudicitiam suæ Vxoris iniuxit ei-
dem Vxori, ut fingeret se præbere aures, & cum venisset, fuit
com.

commisum homicidium, & dicit, quod Hominibus taliter coadunatis parcendum fuit, quia huiusmodi coadunatio fuerat licita Marito Principali Vol. 2. Iason. in leg. 1. §. usfructua-
tius num. 5 præterim in secunda limitat. ff. d. nou. oper. noncas.
vbi quod quavis vindicta, quæ à statuto permittitur, non pos-
sit alteri demandari, tamen is, cui illa permittitur, potest secum adhibere Socios, & Complices ad istum actum, qui si simul cùm eo occidant, non tenebuntur de occiso, nec de Auxilio præstito, & dicit, quod ista sua opinio est multum Cor-
di tenenda Capoll. conf. Crimin. 4. num. 13. vers. 2. similiter, &
num. seqq. & exemplificat in pluribus casibus signanter in il-
lo de hominibus occidentibus converlaniem cum Sorore
eius, qui illos coadunauerat, & dicit, quod non debuerant puniri, sicuti, nec ipse principalis, & quod ita obtinuit iudica-
xi, & hoc idem repetit conf. 7. 3. num. 11. & de seruit. Urban. præ-
dior. cap. 2. 3. num. 11. Roland. conf. 34. numer. 8. & seqq.
usque ad 18. lib. 2. Socin. Iun. conf. 34. num. 13. & 14. volum. 2.
vbi nisi forte quis velit dicere, quod puniri debeant minore
poena, quam principalis prout sèpè contingit in auxiliatori-
bus, & loquitur in his nostris terminis hominum a Marito
coadunatorum ad effectum occidendi adiuterum Vxoris suæ,
in quibus etiam terminis consuluit Paris conf. 154. num. 20. &
seqq. vol. 4. Garer. in præt. Crimin. in tract. 3. de homicid. & assass.
§. 8. excusat patr. num. 13. vbi de Pater, qui per assalsinium
fecerat occidi filiam turpiter conuersantem, & dicit quod nec Pater nec occidens tenetur sol. 169. & §. 9. excusat Maritus num. 11. vbi hoc idem tenet, in terminis Mariti, eius-
que Mandatarij fol. 170. à tergo sequitur Mart. vot. seu decision.
206. num. 9. Marfil singul. 175. per tot. Vbi posita in principio
conclusione, quod concessò uno omnia videntur esse conces-
sa, per quæ deuenitur ad illud, ex illa infert ad præsentem Cas-
sum, & plures adducit rationes Caffan. ad consuetud. Burgund.
rubric. 5. §. primo tit. Des rentes, num. 43. pag. mihi 815. vbi quod
homines taliter coadunati, si simul occidant cùm principali,
non tenentur de occiso, nec de auxilio præstito, & in eisdem
terminis Garz. decis. 7. 1. per tot.

Idque non obstante quod aliquis prædictorum proprijs manibus
vulnerasset, vel etiam occidisset aliquem ex prædictis, prout
Franciscus fassus fuit se quatuor, aut quinq; vulneribus affe-
ctisse

cisse d. Franciscam Pompiliam in dorso: Quia in his etiam terminis militat regula de non puniendo auxiliatores, seu praestantes opem maiori poena, quam principalem; Sicut in individuo firmat ex proximè allegatis *Castrén.* in d. leg. *Rapiores* num. 6. *C de Episc. & Cleric.* & dicto cons. 277. sub d. num. 3. vol. 2. *Iason.* in dicta l. 1. S. *usufructuarius* num. 5. in 2. limit. ff. de nou. oper. *nunciat.* *Chaffan.* ad consuetud. *Burgund.* rubr. 5. S. 1. tit. *des Rentes* num. 43. pag. 815. & ita iudicatum fuisse testatur, *Garz.* d. decisi. 71. ibi -- An licet secum adhibere Socios ad hunc actum, qui si simul cum eo occidunt adulteros minimè teneantur, nec de occiso nec de auxilio, & fuit iudicatum, quod sic.

Et in fortioribus terminis occidentis per assassinium, & sic absente etiàm principali fuit originalis opinio *Baldin.* *Gracchus* num. 5. signanter ibi -- modo queritur namquid *Assassinius* puniatur, & die quod non, quia illud, quod fuit licitum in persona mandantis fuit licitum in Persona mandatarij -- Cod. ad leg. Iul. de adult. *Castrén.* in d. leg. *Refectionis* num. 4. ibi -- Quia, quod possum facere per me, possum facere per ministros meos ad hoc necessarios. *Afflitt.* super consti. Regn. lib. 1. rubr. 8. num. 30. ibi -- tam per se, quam per alium etiam cum pecunia, & sic per assassinium dicit *Bald.* ibidem, quod idem, quia quod licitum est in Persona mandantis est licitum in Persona mandatary. & testatur ita iudicatum, & lib. 3 rub. 46. n. 3. vbi pariter quod, ita iudicatum fuit, & numero 4. *Carer.* pract. crimin. in 3. tratt. de homicid. & ass. S. 8. excusatur Pater num. 13. fol. 169. & S. Non excusatur maritus num. 11. fol. 170. à tergo *Monticell.* codem tratt. reg. 6. de mandatar. nn. 14. fol. 59. *Neuzan.* *Silu.* nuptial. lib. 1. vo: non est nubendum numero 98. præsertim ibi -- & hoc alij mandare -- *Mart.* dicto vot. seu decis. 206. num. 9. ibi -- & multò magis quia *Doltores* firmarunt maritum, qui pre timore Adulteram occidere nequit posse alteri demandare, ut illam pro pecunia etiam occidat, & neuter puniendus est.

Quid quid in contrarium dicat *Caball.* dicto cas. 300. numero 73. quia ipse se fundat in autoritate *Castr.* d. cons. 277. lib. 2. & *Rolan.* d. cons. 34. num. 19. 31. & seq. vol. 2. Verum *Castrensis* nos sive sententiae fauet, ut videre est num. 3. *Roland.* vero non est attendendus, quia cum alleget illud simile de statuto permittingente alicui sumere vindictam, & dicat, quod cum huismodi per-

permisso sit personalis , propterea non potest egredi illius Personam eius opinio est expresa contrà doctrinam Bald.Castr. Iason. & aliorum , quos allegauimus supra S. qua dicta sunt , & cum haec nostra opinio sit exequior , & mitior , est tenenda , vt in puncto resolutio Ias. in dicta l. i. S. v. usfructuarius n. 5. versus finem f. de nou. oper. nunc .

Neque verò huiusmodi poena exasperari potest ob prætensionem delationem armorum prohibitorum , quia ista contunditur cum delicto Bal. in l. aduersus in fine , C. de furt. , Ias. in l. quod dicitur num. 3. ff. de verb. oblig. Marfil. in l. si in rixa num. 15. ff. ad l. Corn. de Sicar: & cons. 5 i. nam. 5 i. vers. cum ergo ista portatio armorum , Cephal. cons. 204. num. 42. & seq. vol. 2. Farin. quæst. 108. num. 166. Guazzin. defens. 26. cap. 2. num. 18. ubi etiam si pro delatione armorum esset apposita maior poena ; Adeo , quod ubi constat , quod delictum fuit commissum cum causa . & iusto dolore . ut in præsenti armorum delatio sit impunitabilis . vel saltē punienda non maiori pœna ea , quæ pro delicto venit apponenda , quemadmodum loquendo de armis à bannimentis reputatis proditorijs bene firmat Police de Reg. aud. tom. 2. tom. 10. cap. 5. num. 1 i. pag. 25.

Quæ eo facilius procedere debent respectu Dominici , & Francisci , qui sunt forenses , & propterea non compræhensi in quibuscumque Constitutionibus Apostolicis , scilicet bannimentis delationem armorum sub gravissimis penitentiis prohibentibus Farinacc. quæst. 108. num. 17. Police ubi proximè numero 43. pag. 29.

Præsertim cùm , & isti sint ætate viatores , ut in Proc. fol. 35. & 304. respectuè quo pariter casu non ligantur Constitutionibus & bannimentis Minoris abilitantibus in delictis ex detectu Potestatis Principis , scilicet Officialis illa condentis . Farinacc. fragm. crim. par. 1. u. bannimento n. 23. vers. tertius est casus Casal. de brac. reg. part. 4. sub numero 464. Surd. decisione 197. num. 6.

Et haec sunt , quæ in maxima temporis angustia pro meo munere colligere potui ad defensam horum pauperum Carceratorum , nullatenus dissidens , quod Domini mei iudices ubi moverint , quod minus fuerit dictum , id supplere , & proferre ve-line. ex summa , qua possent rectitudine , obtemperantes decreto Imperatorum Diocletiani , & Maximiani telato in leg. uni-

onica C. ut que defunt aduoc. & sequentes monitum Hippoliti
Marfilij Insignis criminalistæ dicentis , quod iudex ex officio
tenetur querere defensiones Reo in pract. S. nunc videndum
num.7. & in §. sequitur num.43. & in §. occurunt sub. num.3.
vers. & non solum .

Quare &c.

Desiderius Spretus Pauperum Adu.

Illustriss. & Reverendiss. Domino
GVBERNATORE
In Criminalibus.

Romana Homicidiorum.

P R O

Domino Guidone Francischino,
& Socijs Carceratis.

C O N T R A

Curiam, & Fiscum.

Iuris D. Aduocati Pauperum.

Romæ , Typis Reu. Cam. Apost. 1698

Romana Homicidiorum.

Illme, & R̄me D̄ne. **H**onoris causa, quæ *D.* Guidone eximit ob homicidia sequuta a poena rigorosa, eadem profecto militat ad mitigationem poenæ ordinariæ *Blasio, & Socijs*, qui homicidijs interuenerunt, quamuis prætendatur paclio pretio interuenisse: *Præmisso enim, quod procul versamur à crimine Assassinij propter præsentiam causam habentis, vt communiter sentiunt Gabr. conf. 170. num. 8. & sequen. vol. primo, Bertaz. conf. 143. numer. 13. , Guazzin. defens. 4. capit. 13. num. 3. Gratian. discept. forens. capit. 619. num. 25. Del Bene de Immunit. Eccles. tom. 2. cap. 16. dubit. 21. scđt. 3. num. 3. Thor. compend. decis. par. 3. scđt. prima verbo Assassinium, vbi in fine testatur sic fuisse iudicatum, Cortiad. decis. 95. num. 27. Reuerendiss. Zaulus Episcopus Verulan. obseruat. ad statut. Fauentin. lib. 4. rubr. 14. n. 17.*

Maxima controuersia fuit inter Doctores, an Pater, vel Matus possit demandare alteri excepto filio homicidium filie, vel vxoris adulteræ, & in utramque partem scissi valde digladiantur, vt videre est *Farinacc. quæst. 121. num. 14. ad 18. Caball. resol. criminal. cas. 300. à num. 45. & seq.*, quamuis pro affirmatiua, & leuiori sententia excedat numerus, & in contingentia facti pluriès iudicatum fuisse constet, *Neuizz. Sylu. Nuptial. lib. 1. sub num. 98. Mart. vot. Pisan. 206. n. 9.*

Sed cum quæstio sit extra nostram hypothesis, frustraneus esset labor, & vndique inutilis, nec est tempus terendum, illius angustia præmente.

Nos versari constat in Auxiliatoribus ad homicidia perpetranda conuocatis iuxta sensum Fisci, proindè non solum non conueniunt termini simplicis mandati ob interessentiam Principalis, quia cum iste simul manum imponat criminis, ij qui idem operantur, non dicuntur Mandatarij, sed Auxiliatores, & opem ferentes *Bertazzol. conf. 143. n. 12. vers. Quo verd, & n. 13.*

Sed insuper sicuti iste eximitur ex dicta causa honoris à pena ultimi supplicij, ita Socij, & Auxiliatores, vt una-

A ni-

miter Paul.de Castr.in l.refectionis num.4. & 5. ff. Commun. Prædior., & idem repetit in conf. 277. sub num. 2. versic. Ego autem, & sub num. 3. in fine, qui pro contraria solet allegari lib. 2., Ias. in l. prima §. Usufructuarius sub num. 5. ff. de oper. nou. nunciat. Cepoll.conf. 4. sub nu. 15., & conf. 73. numer. 11., & de seruitutibus Urbanor. Prædior. capit. 23. num. 10. in fine, & 11. Paris. conf. 144. num. 21. & seqq. part. 4. Soccin. Iunior. conf. 34. num. 12. lib. 2. Facchin. consil. 36 num. 22. versic. Quoniam præter quam lib. 2. Cassan. ad consuetud. Burgundia tit. reditib. vendit. rubric. 5. num. 44. fol. mibi 948., Marsil. singular. 175. & in lvnica num. 11. Cod. de rapt. Virgin., Grammat. super constit. si maritus num. 2. & seq. Garz. ex gratia viden. dec. 71. per tot. Farinacc. quest. 121. num. 20., & num. 87.

Qui vero citantur pro contraria opinione non loquuntur in nostris terminis, sed de marito alteri demandante homicidium Vxoris adulteræ, non autem de Socijs occidentibus vna cum Viro, vt in casu nostro, vt videre est Felin. in cap. Si vero sub num. primo erga finem de sentent. excommun. & in cap. quæ in capit. quæ in Ecclesiarum sub num. 13. post med. de constit., Bartol. in l. non solidus §. Si mandato meo num. 5. ff. de iniurijs, Marsil. in dict. l. vnlca num. 3. Cod. de rapt. Virgin., & in singul. 448. Angel. de malefic. verb. Che hai adulterata la mia Donna num. 24., Grammat. in d. constitutione si maritus n. 9.

Et in contingentia facti semper socij, qui auxiliati sunt Maritum occidentem adulteram gauisi sunt eadem Indulgentia, quam Principalis reportavit; hoc est semper euaserunt peñam vltimi supplicij; imò impuniti, & absoluti remanerunt Cepoll. de seruitut. Urbanorum Prædiorum dicto capit. 23. num. 11. in fin. & consil. 4. num. 15. in fin. Neuizzan. in Sylua Nuptial. lib. 1. sub num. 98. Iason. in dicta leg. prima §. Usufructuarius num. 5. ff. de nou. oper. Nunciat. Afflitt. super Constit. Regn. lib. 1. Rubric 8. de Cultu Paris. n. 30.

Nec afficit distinctio Caballi dicto cas. 300. num. 73. vbi Socij possunt quidem impunè assistere Marito, vel Patri occidenti filiam. vel Vxorem respectiuè, vt securius interficiant, non tamen possunt manibus se ingerere, & oc-

ci-

cidere, nam aliás de occiso tenerentur.

Quia pro fundamento suæ distinctionis figit pedes in *Paul. de Castro* dīcto conf. 277. lib. 2. qui tantùm abest, quod suam intentionem probet, quin potius mirificè retorqueatur. Nam postquam sibi obiecit huiusmodi difficultatem sub num. 2. addit ibi — *Ego autem omnimodam contra, quod nec ille, qui interfecit, nec qui Congregationem fecit potest dici, quod teneantur de homicidio quo ad imponendam pœnam Capitalem.*

Et in *confil. Rollandi à Valle* 34. num. 29. & 31. Sed parcat mihi tam eximus Doktor, quia & si conetur consutare Paulum de Castro in dīcto confil. 154. pro nobis militantem sub prætextu quod loquatur contra communem opinionem, hoc non sufficit ex supra citatis auctoritatibus, & si tempus pateretur clarius ostendisse.

Præterea *Rollandus* allegat *Parisium* in confil. 154. lib. 4. Sed peterat illum omittere, quia probat exp̄resse contra ipsum in specie num. 22. ibi — *Et in terminis nostris est optima dīctio Pauli de Castro in præallegato Consilio ubi in fortioribus terminis etiam includendo casum præsentem concludit, conscientes, præsentes, & associantes Maritum in actu dīcti homicidij, ac præstantes opem puniri non debere maiori pœna, quam Principalis per Regul. Accessorium de Regul. Iur. in 6. vltra punctualē auctoritatem Marsilij, & concludit, quod ad omne peius considerata omni rigorositate puniri non deberent vtrā pœnam temporalis relegationis.*

Vtrā quod *Rolandus* in dīcto Consilio exp̄resse confutatur à *Facebin.* dīcto consil. 36. num. 22. verſic. Quoniam preterquam lib. 2. Nec sine viua ratione, nam sicuti qualitas delictum alterans in principali delinquentे illud exasperat etiam in Auxiliatoribus, quotiēs ipsis sit cognita; Ita omnis æquitas expostulat, quod qualitas minuens pœnam in Principali agnita ab Auxiliatoribus, ijs quoque suffragetur *Decian. tract. Crimin.* lib. 9. cap. 33. num. 8. & cap. 36. num. 27. *Parinacc. quæst. 135. num. 34.* & 36. proinde *Caballus* remanet sine fundamento stabili, & contra mentem tot Doktorum allegatorum nullam distinctionem facientium inter assistentes simpliciter, & inter cooperantes ad homicidium, in dō omnes loquuntur

tur de Auxiliatoribus , & insuper plures iudicatum reperitur etiam in fortioribus terminis mandati , vt supra dictum est ; & adeò honoris causa est efficax , vt non solum se diffundat in Mandatarios simplices , sed etiam in Mandatarios qualificatos Assassinij qualitate , eosque absolui fecerit , vt decisum reperimus apud Carer. præt. Crimin. §. nono excusatur nu. 11. fol. mibi 197. ter. Mart. Voto Pisan. 206. n. 9.

Vnde si Mandatarij , & Assassini exlmuntur à pœna ordinaria mortis , quoties occidant Adulteram de Mandato Viri , necessariò sequitur quod distinctio Caballi non sit vera , nec sit recepta in practica , quia si sunt Mandatarij , non possumus negare , quod proprijs manibus occiderint , & nihilominus hanc opinionem Reis fauorabilem contra Caballum seruari in practica testatur Clar. §. Homicidium num. 51. circa fin. ultra decisiones superius alatas.

Si igitur pœna vltimi supplicij non sunt plectendi Blasius , & socij ob opem præstitam in Homicidijs , frustra queritur , an pro habenda ab eorum ore sincera veritate possint supponi tormento Vigiliae , quod duo requisita exposcit , alterum quod militent indicia vrgentissima contra Inquisitum , alterum quod crimen sit atrocissimum ex prescripto Bullæ Reformationis san. mem. Pauli V. §. 10. n. 3. Scanarol. de Visit. Carcerat. lib. 2. §. 6. cap. 4. num. 13. , & ante eum Cartar. de mod. Interrog. Reor. lib. 4. cap. 2. n. 7. , & Baiard. ad Clar. S. fin. quaest. 64. post num. 105. Farinacc. quaest. 38. num. 71. Guazzin. defens. 30. cap. 21. num. 13. in princip. vers. Et non debet , & vers. in bac Curia .

Et licet amplissimæ sint facultates Tribunalis , vbi dispensatur vni ex dictis requisitis , nunquam tamen vidi adhiberi dictum tormentum , nisi vbi non dubitatur , quod crimen de quo prætenditur per Fiscum elici confessionem ab Inquisitis mereatur pœnam vltimi supplicij .

De qua agi credere non possumus ob prætensam conuenticulam , quia congregati non tenentur vlla pœna ob conuenticulam , sed tantum qui illos congregauit , vt egregie Bald. in cap. quaest. causæ num. 13. vers. Tu dic de his , qua vi metusque caus. Farinacc. q. 113. n. 140.

Nec in hoc casu tractari potest de pœna assertæ conuenticulæ

culæ respectu D. Guidonis, quia causa, ob quam congre-
gauit Homines illi suffragatur ad euadendam pœnam ,
cum licitum sit convocare Amicos , & socios ad reinten-
grandam suam existimationem, *Marsil. in l. 1. num. 13. C.*
de Rapt. Virgin. Paris. conf. 154. num. 7., & num. 15. p. 4.
Farinacc. d. qu. 121. nu. 87. Baiard. ad Clar. §. Homicidi um
*num. 195. 196. & 197. vers. & etiam potest alios congre-
gare, & alij supra citati.*

Quod comprobatur nam quoties quis iusto dolore motus
conuocat Homines pro vindicanda iuriaria non incidit in
crimen, & pœnam conuenticulæ, *Corn. conf. 216. num. 3.*
vers. *Quinimò si multi lib. 3.*

Et licet *Farinacius quæst. 113. n. 155.* declareret id procede-
re, si incontinenti fiat ; Secùs si ex interuallo, supplico
aduerti, quod quicquid esset si ageretur de vindicta iniur-
ia personalis, in quibus terminis ipse loquitur , quando
tamè agitur de iniuria lèdente honorem, vindicta sumpta
in omni tempore dicitur facta incontinenti , tùm quia
semper vrget , & præmit , tùm quia potius dicitur Rein-
tegratio , & reparatio honoris, quam alias in existimatio-
ne lèfus conségui non potest, quam vltio , & vindicta , vt
satiùs credimus satisfactum esse in alia pro Domino Gui-
done.

Sed cessat omnis prorsùs difficultas , quia forsàn procedi
posset pro conuenticula, si ad malum finem fuissent con-
gregati Homines, & nullum alium delictum exindè se-
quutum esset, at cum fuerint conuocati iuxta sensum Fi-
isci ad committenda Homicidia , eaque patrata fuerint
nequit amplius agi de conuenticula prohibita, sed de
Homicidijs, quia coadunatio hominum tetendit ad eun-
dem effectum, vt est *magistrak votum* , *Seraphin. dec. 61.*
num. 4. & 7. & ibi aliud votum *Blanchett. nu. 19. & 22.*
post consil. Farinac lib. 2. vbi quamplurimæ authoritates
congeruntur.

Ea potissimum ratione, quia vbi principium , & finis sunt il-
licita, attenditur finis, & non principium , vt docet *Bar-
tol. viden. in l. quod ait lex §. quod ait num. 3. ff. ad leg. Iul.*
*de adult. Alex. conf. 75. n. 6. lib. 3. Marsil. in pract. §. quo-
niam n. 91. Bos. in pract. tit. de fauor. defens. n. 7.*

Additur, quod hominum congregatio non est propter se-
il-

illicita, imò potest esse quandoque licita, & approbata, vt
in casibus relatis à Farinac. q. 1 13. n. 150. 153. 156.; sed
propter malam consequentiam, & propter prauum finē,
propter quem fieri solet, proindè cum prohibitio congrega-
tionis hominum non propter se , sed propter aliud fa-
cta, sit magis attendi debet finis , quam ea , quæ finem
præcedunt Seraphin. d. vot. 61. n. 7.

Neque rigorosa pæna mortis ingerenda esset pro prætensa
delatione armorum reprobata mensuræ nedum contra
Dominium Gambassini, & Franciscum Pasquini, quia uti
Forenses , nec diù versantes in Statu Ecclesiastico per
tantum temporis spatium , quo præsumi posset in ipsis
scientia, sed nec contrà ceteros; nam & si per Constitu-
tiones, & Bannimenta comminata sit pœna vltimi suppli-
cij etiam pro eorum delatione, siue retentione , tamèn
cum armorum gestatio similiter propter se non prohibe-
atur, sed propter perniciosum finem, qui eam sequitur, vel
sequi potest, cumque dirigeretur ad dicta Homicidia ,
eaque quamvis non fuerint in totum licita , non tamen
sunt pænitū inexcusabilia , huiusmodi delationis armo-
rum crimen debet confundi cum fine , pro quo asportata
fuerunt, quia unum infert in aliud , ne peiora videantur
media, quam finis , & licet secundum aliquorum opinio-
nen pœna gestationis armorum non confundatur cum
crimine admisso, quoties sit grauior , hoc tamen videtur
intelligendum esse, quando crimen cum eis patratum sit
vndique illicitum, & inexcusabile, non tamen ubi minuit-
ur, & extenuatur , atque excusatur saltem in parte à
causa, ob quam commissum est.

In omnem casum cum Iure communī attento armorum de-
latio sit leue Delictum , Bartolus in l. leua num.
9. ff. de Accus. , & in l. Diuus la 2. num. 8. cir-
ca med. ff. de Custod. Reor., Marstl. in Pract. crim. §. Pro
complemento num. 44. , Danz. Pugn. Doctorum tit. de
Armis cap. 2. num. 1. , Rouit. super Pragmatic. Regn.
Pragm. 4 de Armis num. 34. , Caball. Resol. crimin.
cas. 107. num. 17.

Licet per Cōstitutiones particulares, & Bannimēta aucta sit
pœna fere ad summum Apicem , non tamen huiusmodi
auctio illius naturā immutat, adeoūt sicuti de Iure com-
muni

muni ob eius lœuitatem non infertur Tortura ad habendam veritatem ab indicatis de dicta dilatione , *Farinacc. q.42.n.7.* ita nec vigore Constitutionum , & Statutorum, quæ pœnam auxerunt, ut optimè *Bald.in l.si cum in ultima lectura n.2 ff. si quis caution.Caualcan. de Brach.Reg. part. 3. sub n.258. verf.tamen supradixi , Guazzin. defens. 30.cap.3. sub n.3.verf.* Plus dicit.

Et in terminis tormenti Vigiliæ , quod nequeat inferri pro Delicto, quod de sui natura non sit atrocissimum, sed vi- gore Constitutionis habeatur pro tali, quoad pœnam, nisi expressè illius natura mutetur etiam circa modum pro- cedendi *D.Raynald.in suis obscuras.crimin.cap.5. §. 1. ad 3.n.125. &c seq.*

Et videmus in Bannimentis Illustriss. D. mei , quod vbi vo- luit posse procedi ad tormentum Vigiliæ in casibus, in- quibus de Iure procedi non posset id expressè declara- uit, quod pro certo non fecisset, si potuisset tale tormen- tum ingeri in Delictis de Iure non capitalibus, sed vigore Bannimentorum pœna yltimi supplicij expiandis.

Quarè &c.

H. de Archangelis Pauper.Proc.

*Illustriſ. & Reueren diſ. Domino
GVBERNATORE
In Criminalibus.*

Romana Homicidiorum

P R O

Blasio Agostinelli, & Socijs
Caceratis.

C O N T R A

Fiscum .

Memoriale Facti, & Iuris .

Romæ , Typis Reu. Cam.Apost.1698.

S V M M A R I V M

Die 24. Junij 1694. Pro D. Petro Comparino contra quoscumque examinata fuit Romæ per me &c. ad perpetuam rei memoriam Angelica filia q. Petri q. lo: Baptista de Castelluccio Aretina Diœcesis &c. etatis suæ annorum 35. circiter cui delato sibi iuramento veritatis dicendæ depositus, prout infrà videlicet.

Dico à V. S. per verità come trouandomi in Arezzo nel mese di Gennaro prossimo passato in Casa della Sig. Maddalena Baldi Albergotti , mi fu proposta l'occasione d'andare à seruire la Signora Beatrice Franceschini , e suoi figlioli &c. mi risolsi d' andarui , si che essendo andata à Casa di dd. Signori Franceschini , parlai con la detta Signora Beatrice , la quale mi tirò da parte in unstantiolino , e mi disse , che mi haueria pigliata per Serua , mà che non hanessi mai trattato à parte con li due vecchi , ch'erano in Casa , uno de' quali era il Sig. Pietro Campanini , e l'altro la Signora Violante sua moglie , e di più m'imposse , che se per fortuna mi hauesse chiamato qualcheduno di dd. vecchi nella loro Camera io non ci fuisse andata , se prima non dimandauo licenza à lei , e con queste condizioni mi accettò al seruizio , onde essendoui entrata , osservai , che la Signora Violante per il più se ne stava nella sua Camera piangendo , e se bene erano freddi così rigorosi se ne stava senza fuoco , si che io compassionandola di nascosto di detta Beatrice pigliauo il fuoco del mio Caldanino , e glielo portauo , e non più tosto glie lo porgeuo la detta Signora Violante mi mandaua via dalla sua Camera , perche detta Signora Beatrice non hauesse pigliato sfegno , che io hauessi fatto detta carità , anzi vna volta trá l'altre , che se n'accorse mi fece lasciare il foco nel Cammino con leuarmi la Paletta dalle mani , con brauarmi , e dirmi , che selei lo voleua , fosse venuta da se à pigliarselo , perche non voleua , ch'io facessei alcun seruizio à dd. Signori Campanini , li quali ne pure trá di loro poteuano parlare , perche tanto il Sig. Guido Franceschini , quanto il Sig. Canonico D. Gironi suo fratello , e Signora Beatrice loro Madre si metteuaano chi à vna porta della loro stanza , e chi ad vn'altra porta della medesima stanza à sentire ciò , che li dd. Signori Campanini trá di loro diceuano , e discorreuano , e cio seguiaua ogni sera , & ogni mattina , fin tanto , che non vsciuva dalla detta Camera , e Casa il detto Signor Pietro , il quale se ritornaua di notte non voleuano , che fussi andata à fargli lume per le scale , anzi che vna volta , che poteua essere vna mezz' hora di notte in circa , che tornò à Casa detto Sig. Pietro , & hauendolo io sentito raschiare pigliai il lume per andargli incontro , di che essendosi accorto il Sig. Guido mi leuò il lume dalle mani , con

A dirmi,

Num. 1.

Depositio iurata Testis super paupertate d. D. Guidi Franceschini , & miserijs passis à DD. Comparinis tempore , quo permanerunt in illius Domo in Ciuitate Arentina .

dirmi . che badassì à sedere , e che non mi accostassi , se non vo-
leuo saltare la finestra , il che tanto più mi pareua male , quan-
to , che haueuo inteso dire in loro Casa , che prima , che entrassi
al seruizio di dd. Franceschini tornando vna sera di notte il
detto Signor Pietro per salire le scale senza lume , cadde per le
medeme scale , e si fece vna bruttissima stincatura , per la quale
fu obligato guardare il letto per molti giorni . Nell' istesso
tempo , che stauo al detto seruizio successe vna mattina mentre
si pranzaua , che li dd. Franceschini diedero certi disgristi alla
detta Signora Violante , alla quale per causa de' medemi venne
vn' accidente , ch' appena arriuò nella sua stanza , e si buttò sopra
vna sedia di paglia doue si fuenne , di che essendosi accorta la
Signora Francesca Pompilia moglie di detto Signor Guido . co-
minciò à lagnarsi , e gridate ad alta voce dicendo : La Signora
Madre mia si more , à che accorsa io , volsi slacciatarla , e portar-
tagli vn poco d'aceto , e di foco , mà perche di questo non-
ve n'era , pigliai della legna , e la misi nel Camino per accen-
derla , il che hauendo veduto la detta Signora Beatrice , lei me-
desima leuò la legna dal foco , con sfegno grande , e mi disse ,
che io pigliassi la Cenere , che quella poteua riscardargli li pie-
di , si che io pigliai la cenere , che era nel detto Camino , la
quale per il freddo grande , che regnaua , quando arriuai nella
Camera doue staua detta Signora Violante mezza morta , già
detta cenere era fredda , si che tanto io , quanto la detta Signo-
ra Pompilia piangendo ambedue spogliatissimo detta Signora
Violante , e la mettessimo à letto , che era ghiaccio , e perche io
piangeuo quando tornai in Cucina dopo hauer messa à letto
essa Signora Violante la detta Signora Beatrice disse , vuoi , che
io pigli vn poco di capeccio per nettarci gl'occhi , il che sentì
ancora la Signora Francesca Pompilia ne fece qualche schia-
mazzo à detta Signora Beatrice , non volse , che più tornassi in
detta Camera , ne volse , che li facessei vn poco di pancotto con-
forme detta Signora Violante mi haueua imposto . Successe
pochi giorni dopo , che fu del mese di Febraro sussegente , che
inentre li Signori Franceschini , Francesca Pompilia , Sig. Pie-
tro , e Signora Violante stauano à tauola discorsero di volermi
mandar via di Casa , si come anche antecedentemente li detti
Franceschini mi haueuano licentiatò ; il che inteso dalla detta
Signora Francesca Pompilia , che com' hò detto staua à Tauola
con l'altri , disse al detto Sig. Pietro , e Violante , sapete perche
la vogliono mandar via ? Perche si sono dati à credere , che lei
mi habbia ridetto , che la Signora Beatrice gli diceste li giorni
passati , che voleua pigliarsi il capeccio per sciugarsì le lagrime
dagl'occhi , quando piangeua per l'accidente successo alla detta
Signora Madre ; Allora il detto Sig. Pietro disse , pregando dd.
Signori Franceschini , che mi hauessero in gratia sua tenuta per
otto , ò dieci altri giorni , perche in occasione , che lui voleua
ritoruare in Roma assieme con ia Signora Violante mi haureb-
be

be condotto con loro, e che questa gratia poteua lui sperarla da loro , essendo la prima , che li haueua domandato , a che niuno de' Franceschini rispose , mà leuatosi da Tauola il detto Sig. Guido venne alla volta mia , e mi diede due bonissimi schiaffi , e vi accorsero ancora , mentre il detto Signor Guido mi dava il detto Canonico suo fratello , e mi diede de calci , e la Madre de pugni dicendomi via , adesso , il che sentito , e veduto dalla detta Signora Violante , commiserandomi disse à dd. Signori doue voleie , che yadi adesso questa poverella , e tutti li dd. Franceschini d'accordo dissero alla detta Signora Violante , vattene via con la Serua ancora tu , dicendogli carogna , & altre parole ingiuriose , fi che detta Signora Violante andò nella sua Camera per vestirsi , & il Signor Canonico sfoderò vna spada , e li corse dietro in detta Camera , e serrò la porta in modo , che temendo io , che non dasse qualche ferita alla detta Signora Violante , corsi per entrare in detta Camera , e trouai , che il detto Signor Canonico s'era ferrato dentro detta Camera , si che tanto io , quanto il detto Signor Pietro , e Francesca Pompilia ci mettessimo à piangere , e gridare per aiuto , stimando Noi , che il detto Canonico là dentro ammazzasse detta Signora Violante , e dopo qualche poco di tempo mi partii dalla detta Casa , e lasciai , che dd. Signori Coniugi , e Signora Francesca Pompilia gridauano con dd. Signori Franceschini ; In tutto il tempo , che io mi trattenni al seruizio degli detti Signori Franceschini in Arezzo , com'hò detto di sopra , posso dire per verità d'hauer seruito à Tauola sempre matina , e sera li detti Signori Franceschini , Signora Francesca Pompilia , Signor Pietro , e Signora Violante de Compatini , e per il vitto , e mangiare di tutti dd. Comenzali , il Sabbato detti Signori Franceschini comprauano vn' Agnellino da latte , nel quale spendeuano dodici , ò quattordici gratic al più , e questa la detta Signora Beatrice , che cucinava lo ripartiuva per tutta la settimana , anzi la Testicciola d'vno di detti Agnelli si ripartiuva per l'antipasto in tre volte , e l'altre volte si seruia per antipasto della Coratella , e Budella ripartitamente per tutti li giorni della settimana , che si mangiaua carne , ne vi era altra sorte di carne à tauola per sodisfare alli bisogni di ciaschedun de' Comenzali . Quando non si compraua il Sabbato , come hò detto detto Agnellino il Signor Guido , ò dava li denari à Giuseppe Garzone di Casa , perche comprasse due libre di carne vaccina , quale ogni matina la detta Signora Beatrice da se medema metteua à cucinare , ne voleua , ch'altri ce s'ingerisse , e di questa si mangiaua à Tauola , e si ripartiuva anche per la sera , e perche detta carne era così dura , che il detto Signor Pietro non poteua mangiare , perche non si faceua cuocere , il detto Signor Pietro restaua per il più senza mangiar carne , ma mangiaua solamente vn poco di pane stuflato , mal conditionato , & vna fettarella di cascio , e con

questo se la passava detto Signor Pietro ne' giorni, che si comprava la vaccina, ne' giorni poi di magro si mangiava vna minestra dilegumi, con vn poco di Luccio salato, e qualche volta vn poco di castagne alesse, sempre però ò si mangiasse di magro, ò di grasso, il pane era negro come inchiostro, e non leuito, nè ben conditionato, il vino poi, che serviva per la detta Tauola era vn fiasco nel quale prima di metterci il vino la detta Signora Beatrice mi ci faceva mettere dell'acqua, fino alla metà, e così ammezzato d'acqua, mi faceva empiere il fiasco di vino, e molte volte era più acqua, che vino, e questo fiasco si metteva à Tauola, & ordinariamente bastava per tutti li Commensali, ancorche il fiasco à rigore non tenesse più di tre fogliette, e mezza all'uso di Roma. Inoltre dico, che partita io dal detto servizio, non molti giorni doppo, fui detto publicamente per Arezzo, che essendo ritornato la sera, il detto Signor Pietro à Casa verso vna mezz' hora di notte in circa haueua trouato, che la porta di strada era ferrata in modo, che lui non poteua aprirla, si che fu astretto à bussare, nè vedendo la Signora Violante, che alcuno di Casa si moeua per andarli ad aprire, lei medema scese le scale per aprirle, mà perche la porta era ferrata con la chiaue, benché hauesse chiamato il Signor Guido, & altri, che erano in Casa, nondimeno non si mosse alcuno, per andarli ad aprire, e che perciò il detto Signor Pietro sen'andasse à dormire all'Osteria, & essendo ritornato la mattina à casa per rivedere tanto la Signora Violante, quanto la Signora Francesca Pompilia, si diceua parimente per Arezzo, che essendosi lamentato il detto Signor Pietro per esser stato seftrato fuori di casa di detto Signor Canonico, ingiuriando tanto il detto Signor Pietro, quanto la detta Signora Violante, nacque tra di loro nuova contesa, e perciò ambedue erano stati cacciati fuori di casa, e che la Signora Violante fù riceuuta dal Signor Dottor Borri, doue la fera cenò, e la notte dormì, e che il detto Signor Pietro era andato all'Osteria à cenare, e dormire, il che sentito da me me n'andai à casa del detto Signor Borri per vedere la detta Signora Violante, ma non fui introdotta, perche la moglie del detto Signor Borri mi disse, che me n'essi andata à fare li fatti miei, perche non vojeua, che li Franceschini, che stauano in faccia alla sua casa si fossero accorti, che io fussi andata à vedere la detta Signora Violante, e che perciò ne fusse nato qualche disordine, la mattina seguente poi andai alla detta Osteria doue mi era stato detto, che vi era andata anche la detta Signora Violante per trouare il detto Signor Pietro, ma non vi trouai alcuno di loro, e mi fui detto dall'Oste, che erano vsciti; si che per non sapere doue trouarmeli, me ne tornai à casa della detta Signora Maddalena Albergotti, doue mi tratteneuo, e sentij doppo dire, che tanto detto Signor Pietro

tro, quanto la Signora Violante erano ritornati alla detta Osteria, dove haeuano pranzato, e che poi per l'interpositio-
ne del Signor Commissario d'Arezzo erano rimessi d'accordo
con detti Franceschini, che però erano ritornati à casa loro, e
sentivo dire ancora, che continuorno detti Franceschini à mal-
trattare, & ingiuriare detti Signori Coniugi nello stesso modo,
che continuamente faceuano nel tempo, ch'io stavo al loro
servizio, e che però ultimamente furono necessitati partire
d'Arezzo, e tornarsene in Roma, e tutte le saderre cose le só
per hauer veduto io medesima, e sentito li mali trattamenti,
che detti Signori Franceschini faceuano à detti Signori Com-
parini, e l'ingiurie, che diceuano, tanto à loro, quanto alla
detta Signora Francesca Pompilia, e respettiuamente per ha-
uerle intefere dire publicamente per Arezzo, dou'è publico, e
notorio, e n'è publica voce, e fama in causa scientiae &c.

Adi 17. Giugno 1697.

Attestiamo noi infrascritti à chiunque fà di bisogno, come la
verità si è, che la Signora Francesca Pompilia Comparini mo-
glie del Signor Guido Franceschini, si è più, e più volte fug-
gita di casa, e candata correndo, quando da Monsignor Velco-
uo, e quando dal Signor Commissario, e quando da vicini per
li continui strapazzi, e mali trattamenti, che li veniuano fatti,
tanto dal predetto Signor Guido suo Marito, che dalla Signo-
ra Beatrice sua Soccera, e dal Signor Canonico Girolamo suo
fratello, e ciò lo sappiamo per esserci incontrati in essa, quan-
do come sopra fuggiua, & esserne di ciò pubblica voce, e fama
in tutta la Città d'Arezzo; la fede di che habbiamo sottoscrit-
ta la presente di nostra propria mano questo dì, & anno su-
detti &c.

Io Canonico Alessandro Tortelli affermo essere la verità
quanto sopra, & in fede hò scritto di propria mano &c.

Io Marco Romani affermo essere la verità quanto sopra, &
in fede &c. mano propria.

Io Antonio Francesco Arcangeli affermo esser la verità
di quanto sopra si contiene mano propria.

Io Camillo Lombardi affermo quanto sopra si contiene
mano propria.

Io Francesco Iacopo Conti di Bissignano affermo quanto
si contiene, & in fede &c. mano propria.

Io Urbano Antonio Romani Sacerdote Aretino, & al pre-
sente Curato della Chiesa Parochiale di S. Adriano affer-
mo essere la verità di quanto sopra si contiene, & in fede
hò scritto di propria mano.

Sequitur recognitio manus in forma &c.

Num. 2.

Diuersa attestatio-
nes super recursu
Franciscae ad Episco-
pum, & Commis-
sarium propter sa-
critis Guidonis Viri,
& Consanguineorum

Particula Epistola
scripta à D. Thoma
de Romanis Auun-
culo Guidonis Fran-
ceschini q. Petro
Comparino Romam

Molt' Illustre Signore, Signore Padrone Offeruandis.

Non posso far di meno &c. partita, che ella fù di poco la Signora Francesca &c: fuggì di casa, e se n'andò in S. Antoni o, quali corsero li Signori Guido, Canonico, e Beatrice &c. accio ella tornasse à dritto, & in questa credenza la Signora Francesca tornò à casa &c. Ieri essendo le Signore Francesca, e mia Sorella in Duomo alla Predica fornita, che fù nell'andarsene, quando fù vicina alla Porta di Monsignore se ne fuggì in Palazzo, dove che era più vicino ad vn'ora di notte, che erano in Palazzo con grandissimo contrasto &c.

Particula alterius
Epistola scripsit per
D. Equitem Bartho-
lomeum de Alber-
gottis Petro Campa-
rini.

Illusterrissimo Signore, e Padrone Colendissimo.

Nel ritorno che feci &c. la Signora Sposa quâ stâ malenconica, e due sere doppo la partenza di lor Signori fece strepito grande, perche non volcea andare à dormire col Signor Guido suo Conforte &c. Ieri giorno delle Palme la Signora Sposa andò &c. alla Predica &c. e nel partires si cacciò à correre nel Palazzo del Vescouo &c. si messe à sommo le scale, e vi stie-
de fino à mezz'ora di notte, e ne la Signora Beatrice, ne Si-
gnor Guido erano sufficienti per farla ritornare à casa, già che il Vescouo non gli diede vdenza, ma vi accorse il Segretario del Vescouo, il quale esortò il Signor Guido, e la Signora Beatrice, à non strapazzare la Signora Sposa &c. basta doppo le tante bisticcie riconducessero la Signora Sposa à casa &c.

Num. 3.

Deposito Franciscæ
super aff. Epistolis
ab ea scriptis Abba-
ti Franceschino &
prius delineatis à Vi-
to registrata in Pro-
cessu fabricato super
præteusa fuga.

Die 21. Martij 1697. Constituta Franciscæ Comparina &c. & in-
terrogata an nunquam transmiserit aliquam Epistolam ad Ab-
batem Franceschinum hic in Urbe tempore quo permanxit in
Areto.

Respondit. Io mentre stavo in Arezzo scrissi ad istanza di mio Marito all'Abbate Franceschini mio Cognato qui in Roma, ma perch'io non sapevo scriuere esso mio Marito faceua la lettera col toccalapis, e poi mi faceua ripassarla sopra colla penna, & inchiostro da me, e mi diceua, che suo fratello hauea gusto d'hauer qualche mia lettera scritta da me, e questo fù due, ò tré volte.

Interrogata an si videret aliquam ex Epistolis vt supra scriptis, & transmissis ad Vrbem ad eundem Abb. Franceschinum recogno-
sceret &c.

Respondit. Se V.S. mi facesse vedere qualcheduna delle lettere da me scritta come sopra, e mandate all'Abbate Franceschini le riconoscerei benissimo.

Et ostensa libi per me de mandato Epistola, de qua in Processu incipien. -- Carissimo Signor Cognato sono con questa &c. & finien. &c. -- Arezzo 14. Giugno 1694. affectionatissima Serua, e Cognata Franciscæ Comparini ne Franceschini.

Rc-

Respondit hò visto, e veduto benissimo questa letteta mostrata mi d'ordine di V.S. che comincia -- Carissimo Signor Cognato sono con questa &c. e finisce Francesca Compatini ne^a Franceschini, & hauendola osservata mi pare, ma non posso attestare per verità, che sia vna lettera da me scritta nella conformità fudetta al Signor Abbate Franceschini mio Cognato &c.

Carissimo Cognato .

Sono con questa à riuertir V.S., e ringratiarla dell'operationi hā fatte per collocarmi in questa Casa, doue lontana dalli miei Genitori viuo, ora vna vita tranquilla, & vna salute perfetta non hauendo li medemi à torno, che mi contituanon giorno, e notte con li peruersi loro comandamenti contro la legge humana, e diuina à non amare il Signor Guido mio marito, e fuggire di notte dal letto del medemo con farmeli dire, che seco non ci haueuo genio, che non era mio marito, perchē seco non hò figli, e con farmi fare in più volte le fughe dal Vescouo, senza veruna cagione con farmeli dire, che io voleuo far diuortio con il Signor Guido, e permettere un grandisordine in Casa, disse mia Madre al Vescouo, al Signor Guido, e poi per la Città, come il Signor Canonico mio Cognato mi hauesse richiesto dell'honore cosa non mai pensata dal medesimo, mi stimolauano di continuare i consigli lontani dal giusto, e dalla pace, che si due al marito con lasciarmi nella loro partenza per espresso comandamento d'obedienza ad ammazzare il marito, e dare il Veleno alli Cognati, e Socere, ad incendiare la Casa, e romper vasi, & altro, acciò non paresse doppo partiti, che fossero stati loro appresso il Mondo, che mi consigliauano à fare tante leggierezze, & in fine della loro partenza mi lasciotorno, che io mi sciegliesse un Giouine à mio genio, e che seco me ne fuggissi à Roma, e tant'altre cose, che per rossore tralascio, ora che non hò chi mi solleui la mente godo vna quiete di Paradiso, e conosco, che li miei Genitori mi guidauano per loro pazzia al precipitio, onde riconoscendo li spropositi fatti per comandamento de' miei Genitori ne chiedo perdono à Dio, à V.S., à tutto il mondo volendo esser buona Christiana, e buona moglie del Signor Guido mio, quale tante volte mi sgredaua con maniera amorosa dicandomi, che vna volta l'haurei ringraziato delle riprensioni mi faceua, e di questi cattuii consigli mi faceuo conoscere, che mi davaano li miei Genitori, e mi confermo. Arezzo
14. Giugno 1694.

Num. 4.

Tenor Epistole scripta vti supra Abbati Franceschiano .

Affectionatissima Serua, e Cognata
Francesca Compatini ne' Franceschini .
Foris.

Num. 5.

Depositio Franciscæ
Pompilæ, quod ro-
gauenit Canonicum,
quod sibi præsentauer-
tit auxilium in fuga.

Die Lunæ 13. Maij 1697.

Francisca filia Petri Comparini &c.
Interrogata ut dicat qua de Causa, & quo tempore præcisè di-
scellit à Cittate Areteij, & ad quem effectum respondit.
Racconterò à V. S. &c. vn mese fa in circa andai à confessarsi
da vn Padre di S. Agostino, che li diceuano il Romano, e
gli raccontai tutti li miei guai pregandolo, che scriuesse in
mio nome, perche io non sò scriuere, à mio Padre con rap-
presentargli, che io ero disperata, e che ero necessitata di par-
tire da mio marito, e venirmene da lui in Roma, mà non
ebbi risposta, e così non sapendo à chi ricorrere per mettere
in esecuzione questa mia volontà, e pensando che nesuno
del Paese, ò per parentela, ò per amicizia di mio marito nou
mi hauerebbe assistito; finalmente mi risolsi parlarne al detto
Caponfacci, perche sentiuo dire ch'era huomo risoluto con-
forme passando vn giorno auanti la Casa mia in tempo, che
mio marito era fuori di Città, lo chiamai, e dalle Scale gli
parlai con rappresentargli il pericolo, nel quale mi trouauo
anco per causa sua, e che perciò lo pregauo à volermi con-
durre quà in Roma da mio Padre, e mia Madre, mà esso mi
replicaua, che non voleua in conto alcuno ingerirsi in questa
faccienda, perche sarebbe stato malsentito da tutta la Città,
tanto più, ch'esso era amico della Casa di mio marito, mà io
lo scongiurai tanto, e gli dissi, che era opera di Christiano li-
berare dalla morte vna pouera donna forastiera in modo tale,
che l'indusse à prometterimi, che mi hauerebbe condotto come
sopra, & allora mi disse, che hauerebbe fermato il Calese,
e che quando fosse stato aggiustato nel paßare, che haueril-
fatto auanti la Casa nostra, me ne hauerebbe dato il segno con-
farsi cadere il Fazzoletto, mà essendoci passato il giorno se-
guente, ch'io stauo alla Gelosia non fece detto segno, & il
giorno fuisseguente essendo ripassato come sopra ci riparlai
nuouamente, e mi dolsi con esso, ch'hauessc mancaro alla
parola datami, e lui si scusò, che non hauieua trouato Calese
in Arezzo, & io gli replicai, ch'in tutti li modi l'hauessc pro-
curato anco di fuori conforme promise di fare, e la Domeni-
ca ultima del mese passato ripassando auanti Casa fece il segno
con il Fazzoletto come hauieua detto, e così essendo andata
à letto con mio marito la sera, & accortami la notte, che il
medemo dormiuva mi alzai da letto, mi vestii, e presi alcune
robbicciuole di mio vſo, vna scatola, con molte bagattelle
dentro, & alcuni denari, che non sò quanti fossero da vn
Scrigno, che vi erano anche de'miei proprij conforme appa-
risce dalla nota tanto delle robbe, quanto dellli denari fatto
dal

dal Cancelliere in Castel Nuovo , e poi scesi à basso , che era l'Alba doue trouai detto Caponsacchi , & andassimo insieme à Porta S. Spirito fuori della quale stava vn Calesse con due Caualli , e Veturino , e montati tutti due in Calesse , ce ne venissimo alla volta di Roma con caminar notte , e giorno senza fermarci , se non tanto quanto si rinfrescauano , e mutauano li Caualli sinche giungessimo à Castel Nuovo doue arriuassimo all'Alba , e poi folsimo sopragiunti , com'hò raccontato di sopra à V.S. da mio marito con farci arrestare daili Sbirri come sopra &c.

Io infrascrutto Religioso Agostiniano Scalzo fò fede com'essendo mi trouato all'assistenza della Signora Francesca Compagni dal primo istante del caso lagrimeuole , fino all'ultimo periodo della sua Vita , dico , & attesto con giuramento Sacerdotale alla presenza di quel Dio , che mi dueu giudicare , come hò trouato , & ammirato à mia confusione in questa sia sempre benedetta figliola vna coscienza innocente , e Santa , & in quelli quattro giorni , che sopraviuette essendo da me esortata à perdonare , questa con lagrime à gl'occhi , e con voce placida , e compassioneuole rispondeua Giesù gli perdoni , che io digià con tutto il cuore l'hò fatto . Ma quello che è più d'ammirare si è , che sentendo gran dolore nella sua malattia , mai gl'hò vdito dire parola offensiva , ò impaciente , ne tampoco sturbamento esterno , ne contro Iddio , ne il prossimo , ma sempre conformata alle Divine disposizioni dicea Signore habbiate misericordia di me , cosa inuero , che si rende incomponibile con vn'Anima , che non stia unita à Dio , alla quale vnione non si giunge in vn solo istante , mà bensi con habitu inueterato . Di più dico , che sempre l'hò vista moderatissima , e massime nell'occasione del medicarsi , che se in lei non ci fusse stato l'abito buono in quell'occasione uon ha uerbia abbadato à certe minuzzerie intorno alla modestia da me molto bene notate , & ammirate , à tal segno , che vna Zitella non saria potuta stare alla presenza di tant'huomini con quella modestia , e compositione con che stava quella benedetta figliola benché moribonda . E se si crede , che lo Spirito Santo quello , che fauella per bocca dell'Euangelista in quelle parole dette da S. Matteo nel cap.7. che Arbor mala non potest bonos fructus facere ; notando che dice non potest , e nò , non facit , cioè mettendo impossibile ridurre la potenza ad atti di perfezione , quando l'istessa è imperfetta , & infetta da vizii , si due dire che questa figliola era d'ogni bontà , e modestia , mentre con tutta facilità , e tutta esattezza facea atti virtuosi , e modesti anche nell'ultimo della vita . Di più è morta con gran sentimento di Dio , con gran dispositione interna con tutti li Santi Sagamenti della Chiesa , e con ammirazione

di

Num. 6.

Arrestationes tamen
Religiosorum, quam
aliorum omni exceptione maiorum, qui
assistentia præbuerunt
Franciscæ usque ad
obitum super honestate,
& declaratione
ab ipsa emissâ de
nunquam violata sit.
de Conjugali .

di tutti li circostanti Canonizandola per Santa . Non dico di più per non esser tacciato di partiale sò molto bene , che solus Deus est scrutator Cordium . Ma sò anche che exabundantia Cordis os loquitur ; e che dice il mio gran S. Agostino , che talis vita , finis ita . Onde hauendo notato in questa sia sempre benedetta figliola parole Sante , opere virtuose , attioni modellissime , e morte da Anime di gran timor di Dio per scatto della mia coscienza sono necessitato , e non posso altro dire , che necessariamente bisogna , che sempre sia stata vna Giouane buona , modesta , & honorata &c. questo di 10. Gennaro 1698.

Io Frà Celestino Angelo di S. Anna Agostiniano Scalzo
affermo quanto di sopra hò detto mano propria .

Alia attestatio . vr Noi sottoscritti per la verità richiesti facciamo piena , & indubbiata fede mediante il nostro giuramento , come in occasione , che ci siamo trouati presenti , e siamo assistiti all'ultima infermità della quale è morta Francesca Pompilia Moglie di Guido Franceschini , essendo la medesima stata più volte ricercata da Padri Spirituali , & altre persone , se haueua commesso mancamento alcuno al detto Guido suo Marito , per il quale gli hauesse dato occasione di maltrattarla nel modo , che si vedea , e farla maltrattare à morte , la medesima sempre ha risposto , che non gl'hà in alcun tempo commesso mancamento alcuno , e sempre è vissuta con ogni castità , e pudicitia , e ciò noi lo sappiamo per esserci trouati presenti in detta infermità hauer'inteſo tutte le dette richieste , e riſposte in occasione anco d'hauerla medicata , & assistita , & hauerla sentita rispondere à dette richieste come sopra nelli quattro giorni ch'è stata nelli patimenti delle ferite , & hauerla ben veduta , e sentita , e per hauergli veduto farc vna morte da Santa . In fede habbiamo sottoscritta la presente attestazione di nostra propria mano in Roma questo di 10. Gennaro 1698.

Io Nicolò Costantino &c. che assistito alla Cura della suddetta Francesca Pompilia per lo spazio di quattro giorni attesto quanto di sopra &c.

Io Fra Celestino Angelo di S. Anna Agostiniano Scalzo dico , come mi sono trouato presente dal primo istante del caso fino alla fine della vita , & hò sempre assistito alla suddetta , la quale sempre diceva , che Dio li perdoni in Cielo , conforme io li perdono in terra , mà per la cosa , che m'oppongono , e mi assassinorono sono inno centissima à segno tale dicea , che Dio questo peccato non glielo perdonasse , perche non l'hauea fatto , morì come vna Martire innocente in presenza d'vn altro Reu. Sacerdote , con edificazione di tutti li circostanti , sicome sopra affermo mano propria

Io Sacerdote D. Placido Sardi affermo quanto ha detto il sopradetto Padre Fra Celestino trouandomi presente come sopra mano propria.

Io Marchese D. Nicolò Gregorij affermo come sopra mano propria,

Io infrascritto affermo quanto nella retroscritta fede si contiene, come anco l'attestazione del Reu. P. Celestino di Giesù, & Maria, & hò assistita la retroscritta Signora Francesca Pompilia per il primo, hauendola raccolta da terra ouc giaceua abbandonata di forze per causa delle ferite, & haueua la testa sù le gambe del Sig. Pietro Comparini già morto, e la medema si confessò nelle mie braccie al P. Rettore del Collegio Greco, perche non si poteua reggere, nè stare colca, e dall'ora non l'hò mai lasciata, mà sempre assistita fin' alla morte sua, che è stata la più esemplare Christiana, & edificante, ch'io mai habbia visto, hauendola sempre vista rassegnata nel Diuino volere, e sempre si confidava nella sua innocenza &c.

Io Giuseppe d'Andilli mano propria.

Io infrascritto attesto, & affermo quanto in tutte dette fedi si contiene per hauer assistito à detta q. Francesca Pompilia &c.

Dionisio Godyn mano propria.

Io Luca Corsi affermo quanto in tutte dette attestazioni si contiene per hauer assistito giorno, e notte sino che è durata l'infirmità di detta qu. Signora Francesca Pompilia, e sentito quanto sopra mano propria.

Io Gio: Battista Guitens Speziale, che hò assistito alli medicamenti, e cura della detta quondam Francesca Pompilia affermo quanto in tutte le suddette fedi, & attestazioni si contengono, per hauer continuamente in tutto il tempo notte, e giorno dell'infirmità della medesima assistito uano propria.

Io Gio: Battista Mucha Giouine, del sudetto Gio: Battista Guitens Speziale affermo quanto di sopra nelle dette attestazioni si contiene, per hauer assistito à detta quondam Francesca Pompilia mano propria.

Si fa piena, & indubbiata fede per me qui sottoscritto Abbate D. Liberato Barberito Dottore della S. Teologia, qualmente coll'eser stato chiamato ad assistete alla morte della q. Signora Francesca Pompilia Comparini, hò osservato in più volte, e specialmente nel tempo d'un intiera notte la nominata defonra con Christiana rassegnazione soffrire i dolori del suo male, e con soprahumana generosità condonare l'offese di chi con tante ferite l'haueua causato innocentemente la morte, anzi
per

per lo spazio della suddetta notte osservai la tenerezza di coscienza della nominata , haucendola passata in addurmi quotidiani sentimenti d'una eroica, e christiana perfettione , tanto che posso attestare, che per la pratica io ho, essendo stato per quattro anni Vicario nella Cura della bo: me: di Monsignor Vescovo di Monopoli non hauer osservato moribondi con simili sentimenti, tanto più con la condizione d'un male così violentemente da altri causatoli , onde in fede,&c. Roma,
questo di 10. Gennaio 1698.

Io Abbate D. Liberato Barberito affermo quanto di sopra &c.

Illustriſſ. & Reuerendiss. D.

GVBERNATORE

In Criminalibus:

Romana Homicidij cum
qualitate.

P R O

Fisco .

Summarium .

ROMÆ , Typis R.Cam. Apost. 1698.

Romana Excidij

III. me & Reu. me Dñe. **D** Eplorable Excidium totius Familie de Comparinis sequutum in hac Alma Vrbe nocte diei secundæ currentis mensis Ianuarij , & sanguis effusus clamat vindictam aduersus Delinquentes de terra apud Deum ; Et nos, vt Munus, quo fungimur, adimplamus operæ pretium duximus hic fideli calamo seriem facti recensere, ex qua Domini mei Iudices agnoscere facilius valeant, quænam iura pro resolutione Causæ, & poenæ Delinquentium sint eidem facto applicabilia, iuxta monitum *Texsus in leg. final. in princip. ff. de iure iur. & quia, vt ait Barbosa axiom. iur. axiom. 93. num. 1. sicut ex facto Ius oritur, ita ex facto Ius moritur.*

Facti ideo series ita se habet, Guido Franceschinus de Ciuitate Aretij in Vxorem duxit Franciscam de Comparinis, cui pro Dote inter cætera promissa fuerunt nonnulla bona Fideicommissio subiecta à Petro, & Violante Iugalibus de Comparinis, qui eamdein Franciscam vti filiam in domo educarunt, & vti talem etiam in Matrimonium collocarunt; Cumque prædicti Petrus, & Violantes nulos alias haberent filios, relicta habitatione Vrbis ad habitandum in domo Franceschini sita in Ciuitate Aretij se contulerunt, vbi per aliquod temporis spatium insimul cohabitando in pace perseuerarunt; Sed vt sæpe accidere solet inter Amicos, & Coniunctos, ortæ fuerunt contentiones, ac iurgia, ob quæ præfatus Petrus, & Violantes è domo, & à Ciuitate Aretij recesserunt, & in Vrbem reuersi furentur; Interim crescente flamma accensi odij, introducta fuit his super Dote promissa, & à Petro Comparino denegata, eo sub prætextu, quod Francisca verè non esset filia ab eodem Petro, & Violante genita, sed vti Partus suppositus fuerit recepta, ac educata, & quod proinde idem Guido, & Francisca ad successionem bonorum Fideicommissi aspirare nun possent; At licet super hoc Articulo Franceschinus fauorabilem reportauerit Sententiam, attamen cum pro parte Petri Comparini fuerit ab ea appellatum, agnouit Francisca se male in domo Viri ab eo tractatam, & ob id curauit è domo ipsius Viri recedere, prout cum auxilio, & societate Canonici Caponsacchi, vt supponitur, Affinis eiusdem Franceschini, fugam arripuit, sed habita per cumdem Franceschinum notitia de Vxoris

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fuga, illam insequeens fuit assequutus in Cauponam Castri Nonni, ubi adeundo Gubernatorem dicti Loci curauit committi capturam, & Vxoris, & Canonici, prout sequuta fuit; porro & aque deinde querela introductum fuit Iudicium Criminale in hoc Tribunali Gubernij Vrbis in quo fabricato Processu, & auditis pluries, tam oretenus, quam in scriptis Procuratoribus utriusque Partis, resolutum fuit ob defectum probationis Adulterij dictum Canonicum relegandum in Ciuitate Verula, & dictam Franciscam in Conservatorio retinendam; Verum quia pro parte de Compartinis praetendebatur subministrationem alimentorum in Conservatorio ad Franceschinum spectare, & pro parte Francefchini dicebatur ad Compartinum pertinere, Illustrissimus, & Reuerendissimus Dominus Gubernator habito prius consensu Abbatis Pauli Germani fratri Guidonis & Procuratoris in Causa, domum de Compartinis eidem Franciscæ pro tuto, & securo carcere sub fideiussione assignauit.

Quibus controversijs, tam in iudicio ciuili, quam in criminali penditibus, necnon super separatione Thori intentata pro parte dictæ Franciscæ vxoris, idem Franceschinus de praedictis vindictam sumere machinabatur, & pro eius prauæ voluntatis executione, coadunatis Dominico Gambassino Florentino, Alexandro Baldesco de Territorio Ciuitatis Castelli, Francisco Pasquini, Antonij de Marchionatu Montis Aguti, Blasio Agostinello de Ciuitate Plebis Incola Villæ Quaratz, & eisdem accommodatis gladijs, & stylo per Bullam Alexandri Octavi prohibitus, ingressus fuit Vrbem in societatem praedictorum Hominum, & habito accessu ad domum de Compartinis hora prima noctis curauit sibi aperiri Ianuam sub simulatione deserendi epistolam Violanti transmissam à dicto Canonico Capo nacca in dicta Ciuitate Verula commorante, prout aperta Ianua habitationis per dictam Violantem, ipsam statim aggressi fuerunt, praefari Guido, & Socij à quibus cum gladijs praedictis fuerit rugulata statim occubuit, prout etiam Petrus pariter rugulatus ab hac vita migravit, Franciscus verò curauit subtrus lectum se abscondere, sed reperta, & pluribus vulneribus affecta, tunc, sic Dco permittente, non remansit extincta, licet post paucos dies etiam ipsa decesserit, ita ut potuit hoc immane scelus revealare; de quo habita noritia per Illustriss. D. meum Vrbis Gubernatorem perugili attentione curauit, ut ab exequoribus extra Vrbem Malefactores insequebentur, prout eadem nocte reperti in Cauponâ Merlucciæ, cum armis igneis, & gladijs

diis prohibitis etiam sanguinolentis, ductisque ad Carceres, & constructo contra eos Processu fuerunt super crimine examinati, de quo aliqui ipsorum sunt confessi, alij verò quamvis sint negatiui super tractatu, ac scientia de occidente omnes de familia, attamen contrà eos, non solùm vrgentissimæ præsumptiones, scientiæ, & tractatus prædicti, sed etiam grauissima ex eodem Processu resultant inditia, itaut per DD. Defensores, minimè impignari, ac conuoceri possint,

Hinc cum hæc causa sit proponenda prò resolutione capienda, credimus innullam substantem elici posse defensionem prò parte Delinquentium, ad euadendam poenam ultimi supplicij quoad confessos de crimine, & ad eximendum negatiuos à rigoroso vigiliæ tormento; Licet enim quæstio sit valdè à DD. agitata an maritus occidens vxorem adulteram non incontinenti, ac in adulterio depræhensam, sed ex interuallo à poena ordinaria, leg. Cornel. de Sicar. excusari debeat, dum aliqui prò excusatione mariti affirmatiuam opinionem proficiuntur, vt videre est apud Giurb. conf. 86. Gizzarel. dec. 18. Mutta dec. Sicilia 61. Bertazzol. conf. crim. 206. & conf. 356. Sanfelice. dec. 537. Pratus ad Paschal. de patr. potest. part. 3.c. 6. vers. binc Cabal. resol. crim. cas. 300. qui omnes Doctores ad mitigandam poenam marito, qui ex intesuallo vxorem occidit, ea ratione mouentur, quia cum causa honoris semper cor præmet difficile est temperare iustum dolorem, ob quem incontinenti dicitur facta honoris defensio cum comodè fieri possit.

Alij verò quamplures negatiuam tuerunt firmantes maritum, occidentem vxorem aliter'quam in adulterio, & in actibus Vnereis depræhensam poena ordinaria puniendum, ita Angel. de Malefic. verbo, che hai adulterato la mia Donna nu. 1. vers. multò minus, Clar. in § homicidium num. 48. & §. fin. quæst. 89. in fin. Gomez. ad leg. Tauri 80. num. 68. Couar. in epit. Ior. Canon. 2.p. cap. 7. § 7. num. 3. Farinacc. quæst. 121. nu. 111. & seqq. & in conf. 141. per tot. vbi contrijs responderet & D. Raynald. cap. 2. § 4. num. 155. & cap. 7. in rubr. nu. 118. & seqq. vbi hanc opinionem dicit vcriorem, & magis Reipublicæ proficiam, nec ab ea in indicando recedendum esse, Sanz. de regim. Valentie cap. 8. §. 8. num. 63. & 64. vbi quod apud illum Senatum pluries indicatum fuit non excusari maritum ex adulterio legitimè probato, si ex interuallo occi-

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dat vxorem , ea ratione , quia olim ex lege Romuli maritus vxorem occidere potuit , sed lex Iulia permisit tantum occidere adulterum vitem , vt probat Anton. Matthaeus de criminibus tit. 3. de adulter. cap. 3. num. 13.

Attamen in hac nostra facti specie credimus versari extra difficultatem propositae questionis .

Quia Doctores pro contraria opinione supracitati procedunt , & intelligi debent quories agitur de marito , qui absque excessu legis , & nullis concurrentibus circumstantijs , & qualitatibus aggrauantibus , iustoque dolore tantum motus vxorem occidit , secus autem , quando , vt in nostro casu adest excessus , & contemptus legis , ac concurrunt circumstantiae , & qualitates aggrauantes , prout cum hac distinctione iuxta communem proxim esse procedendum testatur Laurent. Matthaeus de re crim. contr. 12. num. 29. postquam firmauerit maritum esse excusandum à poena ordinaria . & mitius esse puniendum , ita subiungit , ex quibus praxis communis ea est , ut effectus doloris perpendatur , & solum puniatur excessus , ita si adest dolis suspicio in forma occidendi , ut puta circumstantia tendens ad proditionem , poena aggrauetur .

Circumstantiae vero aggrauantes , quæ in nostro casu concurrunt sunt plures , & adeò graues , vt quælibet ex ipsis est sufficiens ad poenam vicii supplicij imponendam , & ad reddendum crimen qualificatum .

Prima enim est coadunatio hominum Armatorum , pro qua secundum Bannimenta huius Gubernij Vrbis imponitur poena vita , & confiscationis Bonorum illi , qui est caput coadunationis , etiam si coadunati sint solum quatuor , vt legitur in cap. 82. eorumdem Bannimentorum , quæ circumstantia , & qualitas eludij nequit auctoritate aliquorum Doctorum afferentium licitum esse Marito Vxorem occidere coadunatis etiam Hominibus , quia prædicti Doctores loquuntur , & intelligi debent in casu in quo licitum est impunè Marito occidere Adulterum , & Vxorem in actu Adulterij , vel in Domo ipsius Mariti , secus autem ex interuallo , & extra Domum ipsius Mariti ad tradita per Anton. de Ball. tract. var. delist. dispens. cas. 1. num. 65. vel procedere forte possent , si alio modo non potuisset Adulterum , & Vxorem occidere , prout sentiunt omnes Doctores , qui possunt favore Mariti adduci , quod non est dicendum in casu isto , dum Franciscinus in sequendo Vxorem armis igneis munitus poterat

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vindictam sumere in Cauponā Castri noui, vbi recursum habuit ad Iudicem, elegitque viam Iudicialem pro punitione vxoris, & Canonici cum quo illa aufugit; vel demum procederent si minorem numerum Hominum coadunasset, ob quod, crimen conuenticulae non constitueretur; Fortius quia non agebatur de committendo factum, vt diximus impunitibile, & à lege permisum.

Non enim credimus posse per Dominos Defensores prætendi, quod Maritus impunè occidere valeat Vxorem Adulteram ex interuallo, dum omnes Doctores qui adduci possunt fauore Mariti eximunt quidem ipsum à poena ordinaria non autem ab extraordinaria, prout videri possunt adducti per nos supra in §. *Hinc cum Causa*; si ergò in casu nostro Maritus committit delictum punibile, quomodo potest coadunare numerum Hominum conuenticulam formantem, & à Bannimentis prohibitam, absque incursu poenæ ab ipsis comminata?

Secunda qualitas, ac circumstantia est delatio armorum contra formam Constitutionis Alexandri VIII. quæ ad totum Ecclesiasticum Statum extenditur, ad cuius comminata, poenæ excusationem, minus allegari possunt Doctorum auctoritates maritum excusantes, si cum Armis prohibitis occidat adulterum, & vxorem, quia ultra responsonem per Nos datam in explicatione primæ circumstantia coadunationis, ac conuenticulae, quod islae scilicet procedant, & intelligi debeant in casu à lege permisso, & impunibili, dicimus applicari minimè posse respectu Armorum de quibus agitur, dum d. Constitutio non solum prohibet delationem, sed etiam retentionem, fabricationem, & introductionem eorum in Vrbem, & Statum Ecclesiasticum sub poenis rebellionis, & Criminis laesa Majestatis, & quatenus etiam versaremur in casu à lege permisso intelligenda essent Doctorum auctoritates de Armis, quorum prohibita est delatio, non autem retentio, & introductionis sub quoquis prætextu etiam Iustitia, vt habetur in eadem Constitutione §. 1. ibi: *Aut quo quoquis etiam militia, aut executionis iustitia prætextu deferre, minusque in Domibus, aut alibi retinere: & in §. Ad hæc, prohibet etiam introductionem ibi: Retentionem Domi, in in Apotecis & alibi, introductionem in Statum Ecclesiasticum, fabricationem &c.*

Si ergò sub prætextu Iustitia prohibita est retentio, & introductionis

ductio huiusmodi Armorum , si dicula esset prætentio Franceschini , sibi licuisse , cum dictis Armis accedere ad urbem , & Domum vxoris ad vindicandam ex interuallo prætentiam honoris offensionem : Certius quia delictum huiusmodi Armorum est graue , & de per se poena capitali punitur , vt probauimus , quo casu secuto delicto , si maior est poena asportationis , quam delicti , accipitur poena grauiori , qua leuiorem absorbet . *Barts. in l. numquamplura nu. 4. ff. de priuat. delict. Glos. in l. qui de criminis, verbo plurima C. de Accusat. Cacyc. latr. decif. 18. num. 2. & per tot. Cabal. cas. 100. n. 12. 13. & 14. Giurba conf. 26. num. 1. conf. 82. nu. 41. ut grauius puniatur delinquens. Cabal. dicto casu num. 13. & 14. Cartar. de pen. Innocent. art. 2. num. 101. Farinac. qu. 22. n. 22. & qu. 108- num. 166. Sanfelic. decif. 43. num. 2. & 3. alijque quos allegat , & sequitur oril. ad Capan. resol. 1. num. 41.*

Tertia circumstantia est , quia Franceschinus cum Hominibus prædictis homicidia patravit in Domo , ac habitatione propria de Cöparinis , quod sic ut homicidiū in Domo occisi commissum , dicatur qualificatum , cum Domus debeat esse tutum sui Domini refugium *l. plerique* , & ibi *Bart. & alij ff. de in ius vocan. Spad. conf. 107. num. 4.* & quia d. Francischinus ingressus fuit cum muratione vestimentorum , quo casu Homicidium dicitur commissum ex Insidijs *Farinac. qu. 126. cum alij adductis per eundem Spad. loc. cit. num. 5. præsertim de nocte* , ut considerat *Cabal. cas. 31. num. 15. quem allegat. & sequitur Spad. d. conf. 107. n. 6. & prius in conf. 101. n. 6.*

Quarta qualitas , & circumstantia est , quia dicta Francisca erat sub potestate Iudicis , dum fuite eidem , ut diximus in narratione facti , assignata Domus cum fideiustione de habendo illum pro tuto , & securo Carcere , & sic erat in fortijs Curiæ , vt volunt *Gramat. decif. 14. num. 4. & alij allegati per Farinac qu. 30. nu. 52. & 57. præsertim quando agitur favore illius* , qui in fortijs Curiæ existit ; quidquid dici posset quando agitur de eius præiudicio ; ideoque compertum est in Iure , nec minus *Bannitum capitalem in Fortijs Curię existentem occidi posse, Bart. in l. 3. S. trans fugas ff. ad l. Corn de Sicar. & in l. illaqueum ff. de acquir. rer. dom. l. libertas ff. de Stat. Hom. Nell. de Bannit part. 2. qu. 28. cum alijs adductis per Oril. ad Campan. obseru. 24. num. 31.*

Sed cessare videtur omnis disceptatio , dum ex processu resultat dictum Francischinum accessisse ad Domum prædictam , vna cum hominibus coadunatis non animo , & intentione solum

solum occidendi Franciscam vxorem , sed etiam occidendi Petrum , & Violantem , quos ut ipse fatetur , odio graui prosequebatur , propter litem motam , & quia praedicti Iugales instarent apud Franciscam . ut mortem viro , & Cognato veneno pararet , ac etiam quia retinebat in Domo eius Vxorem , ut magis in continuatione adulterij eius honor offendetur , quia ultra quod , ut supra dicimus Francisca fuit auctoritate Iudicis in dictam Domum reposita cum consensu fratri Germani eiusdem Mariti , non intrat quæstio an sic permisum à lege occidere Coniunctos , Amicos , & Domesticos Vxoris adulteræ , etiamque Maritus illos suspectos habebat de permissione , vel assensu præstito Vxori adulterium committenti , cum specialia , ac priuilegia concessa Marito , aduersus Vxorem non sint multiplicanda , ac extendenda , sed strictè interpretanda cap. non potest de probandis in 6. cap. fin. de fil. pæsbyt. eod. lib. quod procedit non solum quando agitur de præiudicio tertij , sed etiam si agatur de solo præiudicio Ei scilicet per Text. l. 1. in fin. ff. de Iur. Imm. & quod in præcis nostris terminis non debeat fieri extensio de persona ad personam ex Couar. de spons. p. 2 cap. 7. §. 7. & ex Angel. in verbo che hai adulterato n. 64. tenuit Antonius de Ball. d. tract. variar lib. 3. de litt. dispens. Cas. 1. nu. 63. & 64. quamvis nos verius affirmare possimus huiusmodi assertiōnem dicti Franceschini esse calumniosè mendicatam , dum in articulo mortis eadem Francisca protestata fuit in damnationem Animæ suæ non offendisse honorem mariti cui potius attestatio credendum venit . cum moribundus non præsumatur immemor salutis æternæ ad Text. in l. fin. C. ad l. Iul. repetund. cap. Sancimus 2. qu. 2.

Ceteræ vero Causæ , quæ ab ipso Francishino adducuntur possunt quidem , quatenus vera essent , demonstrare odium , ac inimicitiam inter ipsum , & dd. Iugales , vertentem , & sic ad probandam in eo causam præmeditatæ necis eorumdem , non vero sufficieniam ad ipsum excusandum à poena ordinaria mortis , quam omnino exigit homicidium præmediatum iuxta Text. in l. 3. §. Patiatur Cod. de Episc. Aud. & in §. Lex Cornelia instit. de Publici Iudic. & in l. pan. §. Quia alias Personas ff. ad l. Pmp. de Paricid. & in l. eiusdem in fin ff. ad leg. Corn. de Sycar. & ex Genes. cap. 9. vers. 6. & Exod. cap. 21. §. Deuteronom. cap. 19. vers. 13. per quæ Iura idem firmat Godofred. Aba. uo ir præ Criminalibus homicida num. 4. & 5. Giurb. conf. Crimin. 2. num.

2. num. 38. & conf. 63. num. 2. Clar. qu. 30. usqf. Punctus est. Farinac. qu. 119. num. 12. & seqq. ea ratione, quia leges prohibente vindictam, priuatam hoc est illam, qnam Carentes publico ministerio propter sua odia in interficiendis hominibus, vel aliter lèdencis sibi usurpant, ut habetur in leg. 14. Cod. de Iudic. & l. 38. S. 8. ff. ad leg. Iul. de Adulter. cùm alijs Iuribus adductis per Dominum meum Raynaldum cap. 7. in Rubrica num. 122. & 123. ubi num. 24. subdit quod non solum in homicidio appensato imponenda est poena ordinaria contrà ipsum occisorem, sed etiam contrà omnes alios, qui data opera, assistunt, & ad homicidium patrandum concurrunt opera, ope, vel consilio ex claro S. homicidium vers. aut verò sunt plures Farinac. qu. 96. num. 38. & seqq. conf. 138. num. 27. Cabal. resol. Crimin. 192. num. 1. & seqq.

Franciscus de Gambis Fisci, & Reuerend& Cam. Apost. Pro- curator Generalis.

Illustriſ. & Reuerendis. Domino
V R B I S

G V B E R N A T O R E

In Criminalibus.
Romana Excidijs.

P R O
Fisco.
C O N T R A
D. Guidonem Francischinum,
& Socios.

Fatti, & Iuris.
Domini Procuratoris Fiscalis Generalis.

Romæ, Typis Reu. Cam. Apost. 1698.

Romana Homicidij cum qualitate.

III. ^{me} & Reu. ^{me} Dñe. **Q** **Voniam** (vt auditum fuit) præcipua defensio Domini Franceschini inquisiti constitit in prætena Causa honoris, ob quam motus fuerit ad delinquendum Fisci propterea partes sunt huius insubstantiam ostendere , vt debita poena plectatur adeo atrox , & enorme delictum .
Examinanda itaque assumo fundamenta , quibus asserta honoris Causa inniti potest , fugam scilicet infelicitis Vxoris à Domo Viri , vna cum Canonico Caponsacco , cum quo in Hospitio Castrorum Noui capta fuit , & prætenas litteras amatorias in Processu super dicta fuga , & deviatione insertas ex quibus prætena Vxoris in honestas defumitur cum alia cumulata in dicto processu , sint omnino lauia , vel æquiuoca , vel non probata , vt etiam colligi potest ex dimissione Francitæ Vxoris cum sola cautione de habendo Domum pro Carceri , & D. Canonicu cum triennali relegatione in Ciuitate Vetula , quæ utique ostendit nullam tuisse à Fisco in eodem Processu acquisitam legitimam probationem in honestatis , & prætena violationis fidei coniugalis , de qua fuerat per inquisitum delata .

Et quidem ex defensionibus tunc factis , immò ex ipso Processu luculentiter apparuit iustissima causa , ob quam infelix Puella mota fuit ad artipendiā fugam , à Domo Viri , vt ad proprios lates remearet , & apud Parentes quietam , & tutam vitam traduceret . Notoriz quippe sunt altercationes statim exortæ ob rei familiaris angustiam inter dictos miserrimæ Pueræ Parentes , & Inquisitum , eiusque matrem , & fratres ijsdem frustra lugentibus se fuisse deceptos sub specie non infimæ opulence ob suppositum annum redditum scut. 1700. qui prorsus insubstiens detectus fuit adeo dum moram in Domo Sponsi inquisiti traxerunt in Ciuitate Aretij aded male ab ipso ciusque Cousanguineis habitu fuerint , vt post paucos instantes ab eadem recedere , ac ad Urbem redire coacti sint totoque tempore , quo conuixerunt continuè inter ipsos viguerint contentiones , & querimoniz , ob fustum dolorem deceptionis , quam passi fuerant excitatae , vt constat ex Epistolis Abbatis Pauli Franceschini eas præsupponentibus ad defensam ponderatis per D. Procuratorem Charitatis , & indicantibus malum animum , vlsque tunc aduersus infelices Parentes conceptum , & signanter in illa scripta 6. Martij ibi : *Torno à scriuere à V.S. che non voglio imitarlo nel modo di scriuere non essendo da par suo seminare certe parole nelle lettere, che meriterebbero risposte di fatti, e non di parole, e queste sono offensione a segno, che le conservuo per suo rimprovero, e mortificatione: & infra ibi: che se lei si darà de guai(che non credo mai) non ne resterebbe esente ne pur lei: sufficiens aurem ex Epistolis resultat probatio, vt monent Gabriel tit. de confes. conclus. I.*

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*clus. I. num. 54. Farinacc. conf. crim. 24. num. 21. Mauth. Sanx. de re
crim. contr. 28. num. 26. & seq. & contr. 77. num. 2. Sperell. decis. 69.
num. 4.*

Et licet ipse non parificent qualitatem alterationum, tamen, ultra quod aliquae praeserunt querimonias adeo excreuisse, ut amaritudines in odium excrecerent, vt constat ex Epistola sub die 12. Februarij 1694. ibi: ma sentendo dall'rna, e l'altra parte crescere fra loro l'amarezze per non dir gl'odij: facile fuisset Inquisito. & D. Abbatii eius fratri exhibendo literas eidem scriptas, vt appareret ex tenore dictæ Edistola ibi: Io però che sento che il nemico di Dio habbia messe amarezze tra loro, è connenuole, che io adempisca con V.S. al debito di risposta: ostendere querimonias fuisse iniustas, vel ab ipsis excitatas, quas cum non exhibuerint, vrget contra occultantem præsumptio veritatis earumdem, & ista Causa ob quam conquarebantur, & altercabantur, vt in similibus terminis firmauit Rota in Romana, seu Neapolitana liberationis à molestijs 27. Februarij 1690. s. eo magis coram Eminentissimo Cardinali Caccia, & in Ròmana Pecuniaria super exhibitione 21. Junij 1694. s. clarius coram R. P. D. Muto. Quæ tamen specificatio pessimorum tractatum erga Parentes, quibus ex conuentione dotali subministranda erant alimenta habetur ex depositione Ancillæ data in Summ. num. 1. quæ vtique si legentium commiserationem extorquere apta est, multo magis credibile redditur ex huiusmodi pessimis tractationibus summopere exasperatum fuisse animum miserrima sponsæ suos Parentes ita vexari frustra lugentis, imò etiam lugere impeditæ.

Reditus ad Vrbem eorumdem Parentum quantò, & quidem iustissimo dolore affecerit miserrimam Puellam 15. ætatis annum non excedentem, omnibus notum esse potest; Ea quippe omni auxilio destituta, maritali seueritati exposita remanebat, ob quam se quotidie in vita discrimine constitutam timebat, & frusta tentatio recursu ad Reuerendissimum Episcopum, & D. Commissarium Summ. num. 2. frustaque interpositione nobilium virorum, qui prius etiam inutilis euaserat, vt constat ex dicta Epistola 6. Martij ibi: Ma che rimedio posso darmi io, quando tanti Cavalieri amorevoli d'amble parti sento si siano framessi per comporli, e non li è sortito: Non aliud sibi remedium superesse putauerit, quam fugam arripiendi e domo Viri, & Patrios lares repetendi; Quæ propterea vt potè executioni demandata pro euadendo vita discrimine, nullum in honestatis, & violatae coniugalis fidei præbere valet indicium, cum ad causam omnino licitam potius quam ad criminosam sit referenda, vt per Text. in cap. in pœnis de regul. iur. in 6. monent Handed. conf. 105. num. 60. lib. 1. Crauet. consil. 8. num. 2. & conf. 319. num. 1. Andreol. contr. 66. num. 24. Mascard. de probat. conclus. 814. num. 3. vol. 2. Conciol. allegat. 87. num. 24.

Vrgente etiam alia Causa ob quam Patrios lares repetrere studuit, Paternæ, scilicet infirmitatis, de qua in epistola, in qua insinuauit non

non ex peccanda m^e eti^m societatem D. Gregorij Quilichini fese^t
etiam circa hoc remittendo D. Canonico, vnde bene inseriti p^o-
test, quod ex causis licitis de fuga agebatur.

Nullatenus verò fidendum est Epistola ab eadem Sponsa conscrip^ta D. Abbatii Franceschino, in qua illi gratias agit quod ipsam Matrimonio iunxit cum inquisito eius fratre, ac profitetur. quod post Genitorum discessum omnino tranquillam vitam ducebant cessante illorum peruersa seductione, quæ ipsam à Viro alienam reddebat, & detegit pessimum consilium ipsi traditum totam Domum perdendi. Ipsa siquidem Sponsa ingenuè in suo constituto fatetur eam conscripsisse, vt Inquisito obtemperaret eo designante Apices, ipsaque calamum super inducente, vt ex particula constituti cividem data in *Summario num. 3.* & tanè sola lectura dicitur Epistola talēm inferit horrorem, vt incredibile sit, quod infelix Puella, nisi metu per virum illatum coacta talia scribere potuerit in perniciem, & detractionem propriorum Genitorum, ad quem effectum eadem datur in *Summario numero 4.*

Iustior etiam evasit timor ob quem mota fuit ad fugam capientam infelix Puella ex mota per Patrem Inquisito lite super nullitate constitutionis dotis, utpote factæ ex falsa causa, quia credebat eam filia promittere, qualem non esse agnouerat ex seculacione per Matrem facta, quod ad decipiendum Virum, & arcendos eius Creditores partum suppulisset; Cum enim omnia bona fuissent in dotem assignata, & quidem conspicui valoris inspecta qualitate personarum mota super illis per Socerum controuerchia utique grauissima, & Capitalis exorta timeri poterat inimicitia per quam coniugalis pax, iam diu præcedentibus altercationibus turbata, recrudescentibus odiis, prorsus eliminata regnaret. Hunc enim effectum parere lites tuper considerabili quantitate, multoque magis super toto ase motas quotidiana experientia docet, & tradunt *Gramaticus conf. 46. num. 4. Cranett. conf. 75. num. 1. Soccin. Iun. conf. 73. num. 14. volum. 2. Deelian. trast. Criminal. lib. 3. cap. 25. num. 50. & 57. Ver. mighol. conf. 32. num. 5. Farinac. quest. 49. num. 2.*

Adeoque cum iustus timor consideretur penitatis per prudentem Iudicem circumstantijs Personarum, & temporis, vt ex Text. in l. metus autem Causa ff. ex quibus casis, maior Glos. in cap. Pen. de his, quæ cui metusu. Caus. monent Faris. confl. 53. num. 60. lib. 4. Menoch. de arbitr. cas. 135. num. 2. Mascar. de probat. concl. 1051. num. 21. Cartar. decif. Criminal. 72. num. 75. optimè Mogolon. de metu cap. 2. §. 7. num. 1., & cap. 7. num. 1. versi tum quia; Affirmandum omnino in calu nostro est eas tales reputandas, vt non modo Puella tenera atatis, qualis erat infelix Sponsa, omni auxilio destituta, & exposta seueritati Viri, quæ illam igneo breviori sclopulo appetierat mortem ipsi uminando ob leuissimam suspicione, sed quævis constantissima fêmea se

in continuo vita discrimine constitutam suspicari posset, sibi-
que præcauendi necessitatem agnolceret, quod si quæcumque
Causa etiam opinata sufficeret ad illam excusandam, vt per
Text. in l. habitatores s. final. ff. locat. firmat Mogolon. de metu
cap. 7. num. 1. Farinac. quest. 125. num. 63., & 64. & num. 196.
D. Canon. Reynald. in sintax. rer. crimin. tom. 3. cap. 25. §. 4. nu. 34.
vbi quod sufficit videre signa, & actus manifestæ voluntatis,
vel præparamenta. Quantò magis excusabilis, & commisera-
tione digna censeri debet dum ideo vrgens, & vndique verifi-
cata concurrit Causa, ob quam ad fugiendum mota fuit, vt
aduertit d. Mogolon. tit. 2. s. 6. Vbi quod solus visus armorum,
licet habens eis non vtratur, neque ea euaginet est iuxta causa
metus productiva.

Nec inhonestatis, & violatae coniugalnis fidei præsumptio insurge-
re valet ex societate D. Canonici Capontiacchi, cum quo fugam
arripiuit, ob quam ipse fuit ad triennalem telegationem in Ci-
uitate Vetula damnatus. Cum enim, vt dictum est, infelix
Puella esset omni auxilio destituta, propriæque ætatis, sive
sexus, & status ratio non pateretur, vt sola, vel in societate ali-
cuins vilis mulierculæ periculoso itineri se committeret, ne
domestica discrimina fugiendo, incaute se grauioribus pericu-
lis exponeret, prout contingere potuisset, si per virum sola
fuissest in itinere deprehensa, nec alium tutiorem inuenire po-
tuerit Comitem, quam ipsum D. Canonicum amicitia coniun-
ctum cum D. Canonic de Comitibus, qui licet familiaris, &
consanguineus inquisisti eius statum magna commiseratione
prosequebatur, tutiùs existimauit cum eo fugam arripercet,
quem prouidum, & aptum ad illam ad optatum esitum perdu-
cendam censuit, quam aliter illam exequi cum maiori discri-
mine; Quæ propterea necessitas, & prudens electio minoris
mali omnem prætensem inhonestatis suspicionem excludit, vt
tradunt Bald. in l. fiuum num. 1. ff. de his, qui sunt sui vel alien. iur.
& in l. 1. num. 35. C. de ijs, qui accusi non poss. Menoch. de præsump.
lib. 6. præsumpt. 54. num. 22. & 23. de arbitr. lib. 2. cas. 89.
num. 23.

Eaque vterius exclusa remanent ex modo, quo fuga fuit execu-
tioni demandata iter ad Vrbem arripiendo recto tramite, &
cum maxima celeritate. Si enim expendenda libidinis causa
cum eodem Canonico Amasio (vt alias fuit eidem obiectum,
& modo forsan animosius ad affectandam honoris Causam re-
petetur) infelix Puella fugam arripuisset, vel moram traxisset
in aliquo loco extra publicam viam in quo per inquisitum
deprehendi non posset, vel non accessisset cum tanta celeritate
ad Vrbem, nisi verè id peregriset Patrios lares repetitura, in-
qua vitæ, atque honoris securitatem assequi sperabat. Nimis
quippe imprudens fuisset Amasij consilium traducendi Vxo-
rem à Domino Virti ad locum, quo suam cupiditatem explere
non

non posset, quæ sola inuerisimilitudo sufficeret ad ostendam veritatem Causæ per Vxorem in constitutis adductæ, quod pro vitando Vita discrimine in quo se constitutam timebat fugam arripuit. vt ad Patrios lares se conferret opem præbente, & associante Canonico ex mera commiseratione, & omnino salua honestate, verisimilitudo siquidem semper est potissimum spectanda ad arguendum delictum, vel illud excludendum, vt tradunt Farinac. de falso. & simul. quæst. 153. num. 176. & seqq. & conf. 60. num. 28. & 31. Caball. resol. crimin. casu 199. num. 35. Conciol. resol. crimin. 27. num. 2. & seq. Vermigliol. conf. 31. num. 5. & conf. 266. num. 10.

Minusque subsistit alterum fundamentum assertæ Causæ honoris, quod alias fuit per inquisitum constitutum super prætensis literis amatorijs, quæ per miserrimam Puellam scr. pte prætendebantur Canonico, necnon ex quibusdam ab eo scriptis, reperiatis in Latina Hospitij Castri noui in quam præiectæ asserebantur ad illas occultandas; Ultra responsiones quippe tunc traditas per D. Procuratorem Charitatis, non probata identitatis characteris, & incertitudinis, cum non appareant, cui sint directæ, quæ forsitan admittantur cum nulla poena fuerit eidem Puella interrogata, & simpliciter dimissa sit cum cautione de habendo Domum pro Carceri, quamvis iuspecto eorum tenore præferre videantur, nimia bencvolentia significationem, tamen ea potuit per eamdem fingi ad aliciendum D. Canonicum relucantem, vt ipsa fatetur in suo constituto ad ei auxilium præbendum in executione præmeditatæ fugæ ipsam ad Vrbem associando, constat enim Epistolas fuisse ad hunc finem exaratas Samm. num. 5. Adeoque commiseratione digna existimari debet miserrima Puella omni auxilio destituta, & in discrimine vita posita, si blandis, & forsitan amatorijs verbis allucere tentauit D. Canonicum, quem aptum credebat ad ei opem ferendam, nec ex d. Epistolis ad eundem fugæ finem conscripsit maius violata pudicitia sumi valet argumentum, quam ex ipsa fuga; nec nouum est castissimas feminas similibus artibus quandoque uti ad licitum finem vt in sacris paginis, fecisse legimus luditta ad decipiendum Holofernem, vt patriam liberaret. Id igitur facere potuit infelix Puella, vt mortis periculum euaderet absque vlla in honestatis nota.

Accedente præterim confidentia, quod habebat, tum propria continentia, tum integratatis eiusdem D. Canonici de qua depositi Testis de auditu à D. Gregorio Guillichino pariter confanguineo, (vt mihi supponitur) inquisiti in dicto Proc. per Fiscum ad instantiam inquisiti tunc aderentis examinatus ibi: *Il Signor Gregorio all' hora mi soggiunse il Signor Canonico vi va per buon fine, e perche ella se ne vorrebbe andare à Roma, e mi disse anche, che non ci poteua nascerne del male, perche fra loro non v'era male alcuno: cuius profecto Testis depositio contra inducentem plenè probat,*

probat, vt tradunt *Farinac.* *conf. 120.* *num. 10.* *Vermigl.* *conf. 500.*
num. 3. *D. Canon.* *Raynald.* *tom. 2.* *cap. 23.* *§. 4.* *num. 26.* *fol. 112.* Ac
propter ea cum nihil mali posset dicta infelix Puella suspicari à
societate dicti D.-Canonicī, nec aliud remedium aptius haberet,
vt suam præmeditationem exequeretur, tractatus habitus cum
codem per Eoistolas excusandus est, vt potè ad hunc finem or-
dinatus, quamvis aliqua in illis legantur verba amatoria, quæ
potius officiosa, & ad captandam benevolentiam apposita cen-
seri debent, & semper explicanda sunt iuxta intentionem pro-
ficiens, vt ex *Text.* in *cap. intelligentia*, & *cap. propter ea de ver-*
bor. signific. monent *Surd.* *confil. 431.* *num. 35.* cum alijs relat. per
Molin. *de rit. nupt.* *lib. 3.* *quæst. 85.* *num. 50.*

Accidente insuper participatione D. Canonici de Comitibus no-
bilis viri, & affinis D. Inquisiti, & hunc tractatum promouen-
tis, quem incredibile non est illius honori insidiari voluisse,
sed tantum ex causa commiserationis infelicem Puellam ab
imminenti mortis periculo eripere; Talis autem participatio
elucet ex ipsis epistolis, quæ ab illo conscriptæ prætendun-
tur.

Leuioris ponderis sunt alia prætentæ inhonestatis indicia desum-
pta ex accessu D. Canonici ad domum Inquisiti nocturno tem-
pore ad effectum alloquendi cum uxore occisa, de osculatio
ciusdem in itinere, de qua defonit Franciscus Ioannes de Ru-
bris Chisii, vulgo *Caleffe* Duotor, & prætensta condonatio in-
codem lecto in hospitio Castrorum Noui. Ultra defectum siquidem
probationis respectu primi, vt potè resultantis ex dicto vni-
tantum Testis Mariae Margarite de Contentis, quæ patitur re-
levantissimam exceptionem publici meretrici, & tanquam vnicia
nihil probat, vt respectu meretriciæ qualitatæ monet *Text.* in
l. 2. §. lege Iulia, ibique *Glos* verbo *palam ff.* de testibus Marfil. *confil. 102.* *num. 9.* *Vermigliol.* *confil. 408.* *num. 1.* *Crot.* de *Test.* *part. 3.*
num. 46. *Parif.* *confil. 67.* *num. 80.* *lib. 3.* *Mascard.* de probationibus
conclusi. *1362.* *num. 20.* Et respectu vniuersitatis, *Textus* in *cap. ve-*
niens, & *cap. licet vniuersis de Test.* *Farinac.* de *Test.* *quæst. 64.* *n. 28.*
& *33.* *Vermigl.* *confil. 146.* *num. 3.* *D. Cauonicus Raynaldus in Sin-*
tassis. rev. crimin. *tom. 1.* *cap. 1.* *§. 10.* *num. 118.* Cum talis accessus
esset ordinatus ad lictum finem subtrahendi miseram Puellam
ab imminenti mortis periculo, eam ad patios lares ducendo
non est trahendus ad indicium illiciti commercij, cum sola pos-
sibilitas ad hunc effectum sufficiat, vt in bonam partem sit su-
mendus, vt per *Text.* in *l. merito ff.* pro soc. tradunt *Menoch.* *confil. 84.* *num. 75.* *Surd.* *decif. 58.* *num. 4.* *Vermigliol.* *confil. 171.* *num. 27.*
& *confil. 397.* *num. 11.* *Rota decif. 106.* *num. 7.* *par. 2.* *duerfi.*

Maxime cum ipse Testis de tali accessu depoens referat de auditu
a dicto D. Gregorio Guillichino, quod erat ad bonum finem,
& quod nihil mali intercedebat inter D. Canonicum, & occi-
sam, qui cum esset melius informatus, vt potè amicus, & con-
san-

(anguineus Inquisiti (vt mihi supponitur) omnem contrariam suspicionem excludit; cui depositione consonare videtur alia ipsius D. Canonici Franceschini fratri Inquisiti, qui interrogatus an sciret inter D. Canonicum Caponacchium, & sponte familla familiaritas intercederet, respondit -- Quæsto non hauemus mai saputo per l'innanzi, mà seguito il ratto la Città dice, che fr̄ effi vi passasse assolutamente qualche corrispondenza que ignorantia prorsus excludit, & inuerisimiles reddit furiosos, & illicitos accusus D. Canonici ad domum, cum enim Inquisitus sponte occidere minatus esset ob iniustam suspicionem de illo conceptam credibile est, quod tam ipse, quam frater, o mnesque domestici omni studio inuigilauerint pro eius custodia, itaut ipsis innotuisset dictus accessus si vere, vt supponitur, frequens fuisse, & ad malum finem ordinatus.

Eodemque defectu probationis laborat prætenſa mutua deosculatio in itinere, de qua deponit Teſti vnicus, cuius testimonia anomolica ex eius assertione detegitur, dum id vidisse assertio nocturno tempore non reddita scientia causa, quod, scilicet, tunc Luna luceret, vel alio artificiali lumine, tenebras noctis depellente, id videre potuerit, qua ratione non reddita, fidem non meretur, vt aduertunt Bursatti. consil. 34. num. 6. Farinac. de Teſti. quæſt. 66. num. 38 Giurb. consil. crimin. 37. num. 41. Polidor. Rip. in tract. de noct. temp. cap. 57. num. 7. & seq. Vermigliol. consil. 74. nu. 1. D. Canonicus Rainald. tom. 1. cap. 11. §. 8. ad 13. num. 8. fol. 391. Addita insuper maxima inuerisimilitudine, quod dum Chisum duecebat, & quidem ea velocitate, vt potius volare, quam velociter progrederetur, retrospicere potuerit, & muraum deosculacionem videre, quæ pariter inuerisimilitudo fidem illi adimit, iuxta ea quæ tradunt Farinac. consil. 192. num. 60. in fin. Vermigliol. consil. 20. num. 24. & consil. 74. num. 4.

Omnemque prætenſa in honestatis suspicionem excludere apta est assertio eiusdem miserrimæ Puellæ facta in articulo mortis post plura lætalia vulnera eidem illata ad requisitionem Religiosarum personatum, & aliarum ipsi ministrantium, quod nunquam defecrat fidei coningali, semperque cum omni castitate, & pudicitia se gesserat, vt ex iurata attestatione, ibi -- Come in occasione, che ci siamo trouati presenti, e siamo assistiti all'ultima infirmita della quale è morta Franceſca Pompilia moglie di Guido Franceſchini, essendo la medema stata più volte ricercata da Padri spirituali, & altre persone, se hauera commesso mancamento alcuno al detto Guido suo marito, per il quale gl'hauesse dato occasione di maltrattarla nel modo, che si vedeua, e farla maltrattare a morte, la medema sempre h̄a risposto, che non h̄a in alcun tempo commesso mancamento alcuno, e sempre è vissuta con ogni castità, e pudicitia; Et magis præcisè de hac constanti assertione deponit Fr. Cæleſtinus Angelus à S. Anna Ordinis Discalceatorum S. Augustini in dicta attestatione subscriptus ibi - la qual sempre diceua, che Dio gli perdoni in Cielo,

con-

conforme iogli perdonò in terra , ma per la causa che m'oppongo , so-
no innocentissima à segno tale , che dicem , che Dio di questo peccato non
gle lo perdonasse , perche non l'hanno fatto . Quæ tanè assertio in ar-
ticulo mortis emissa omnem fidem meretur , cum nemo tunc
mentiri præsumitur , vt tradunt *Natta* consil . 537 . num . 18 . lib . 3 .
Calderis . consil . 15 . tit . de *vsur* . *Menach.* de *præsumpt* . *præsumpt* .
3 . num . 7 . & seqq . & in præcisissimis tertianis suspecti de heresi , quod
huiusmodi sulpicio tollatur si in articulo mortis dicat . & pro-
testetur se vixisse , & vele mori , & credere secundum placita
Sanctæ Romanae Ecclesiæ , *Decian* . tract . crimin lib . 5 . tit . de de-
fens . *Rer . cap . 17 . nu . 27 . vbi refut opinionei Alberici in Rubric .*
C . de hæret . circa finem vers . ultima nota , assertentis ex hac protec-
tatione facta coram Cardinalibus defensam fuisse memoriam .
Bonifacij Papæ , & ipsum Albericum ex ea defendisse *Galea-*
tium Vœcomitem Mediolani . Et maxime dum omnes præ-
fati Testes conueniunt miserrimam hanc Puellam obijisse cum
maxima adficatione adstantium , semperque gessisse actus
Christianæ perfectionis , vt in dicta attestatione ibi e per hauerli
reduta fare una morte da Santea . Et in alia dicti *Pattis Cœlestini*
Angeli prateritæ vitæ innocentiam ex actibus ante obitum ge-
atis arguentis , quæ omnes dantur in Summar . num . 6 .

Ceterum quatenus etiam tam ex dicta fuga , quām ex repertis lit-
teris , vt supponitur , & ipsarum verbalis tenor præferre vide-
tur amatoris aliquam de inhonestate vxoris potuisse Inquisitus
suspicionem concipere , quæ iustum illius iram prouocare vo-
lueriset ; Nullatenus tamen excusabilis redditus adeo truculenta
vindicta , post tantum temporis interuallum sumpta , nedum de
ipsa miserrima vxore , sed de omnino incauis , & nil tale me-
tentibus eius genitoribus , & cum adeo graibus circumstantijs
delictum extollentibus , quominus poena ultimi supplicij ple-
tendus non esset si illud fateretur . Quamvis enim iustus dor-
lor violata coniugalis fides maritum adulteram vxorem occi-
denter poenam temperare soleat , nam de totali impunitate am-
plius agendum non est post ademptam licentiam proprium ho-
norem nece Adulteri , vel *Adulteræ vindicandi* , vt monent *Fel-
lin* . in cap . si verò num . 3 . de sentent . excommunic . *Imola* in l . quid er-
go 5 . si hæres num . 4 . ff . de legat . 1 . *Mantic* . conf . 241 . num . 18 . in fin .
lib . 1 . *Oldendorp* . var . leet . ad *Iur . Ciuil* . interpretat . lib . de *vsucap-*
tit . de adult . num . 1 . in fin . pag . 295 . *Baccon* . ad *Treuul . volum . 2 . disp .*
32 . thes 6 . litt . C . vers . idem conceditur pag . 1277 . *Cassad* . *Rittesch* . ad
Nouell . *Iustinian* . par . 12 . cap . 5 . num . 8 . pag . 677 . *Matthias* . *Stephan* .
ad nouell . 177 . num . 20 . pag . 609 . Attamen ad euirandam leg . *Corne-*
lia de Sicarijs poenam , eamque temperandam , seruari debent
omnia requisita relat . per *Angel* . de malefic . vers . che hai adulterato
la mia Donna num . 8 . & seqq . & per *Ioann* . de *Teitops* in tract . de
Iur . occiden . *Præhens* . in adult . par . 2 . num . 43 . & seqq .

Præcipuum autem , & indispenſabile requisitum est , quod Vxot
fit

sit in adulterio deprehensa, ut per Text. in l. quod ait lect. 233 ff. ad leg. Iul. de adulter. ibi: voluit enim ita demum hanc potestatem Patri competere, si in ipsa turputudine filiam deprehendat labo quoque probat, & Pomponius scribit in ipsis rebus vencereis deprehensam occidi, & hoc est, quod Solon. & Drago dicunt explicat ibi Glos. vers. in ipsis rebus, & tradunt Bartol. aliquique interpetres, Salicet. in l. Gracchus C. ad leg. Iul. de adult. Angel. de malefic. dicto vers. che hai adulterato la mia Donna num.8. & 9. Gaball. resol. crimin. cas. 300. num. 22. 29. & 33. Matth. Sanz. de re criminal. contr. 11. num. 12. & seq. qui Text. licet loquatur de Patre, multo magis procedit in Marito, cuius ira facilius contra Vxorem accendi potest sinistra, & sspè iniusta suspicione de ea concepta, & qui non semper bonum pro ea consilium capere solet, quod Patrem ex instinctu naturæ facere lex præsumit, ut monet Text. in l. nihil interest ff. eodem solum excusans Patrem si vna cum Adultero filiam occidat, vel latalia vulnera eidem inferat.

Idque est adeo verum, ut non sufficiat Vxorem fuisse repartam in aqibis remoitis, vel preparatorijs ad adulterium, ut communiter firmant DD. & signantur Soccin. in cap. peruenit n. 365. cum duobus seqq. de Sent. excom. Blanc. de Iudic. num. 69. Decian. tract. crim. lib. 9. cap. 5. num. 15. Tolosan. sintasm. Iur. lib. 36. cap. 6. num. 7. Laurent. Kirghen. com. opin. cent. prima conclus. 5. vers. adulter. an probaretur circa medium Anton. Mart. in Comment. de crimin. ad lib. 48. ff. tit. 3. num. 16. affirmans Vulpian. verecundias Causa paucis, & significantibus verbis vnum esse quibus non nisi quintam amoris lineam intelligere poslit Farinac. quæst. 121. num. 42. circa med. vers. Credo voluerit Ioh. Teitops. de Iur. occid. prebens. in adulter. par. 2. num. 1. litt. I. cuius verba referre opportunum censeo cum illum D. Iudices forsitan premanibus non habent sic itaque verba dicti Text. explicat ibi: Quia utique argunt non sufficere hic adulterij præludia, sed requiri obscenam membrorum Commixtionem &c. & post relatas Doctorum Authoritates subdit -- Idque clarius appetet ex verbis solonis relativis à Luciano. in Eunuco ante finem ibi: nisi iij mentiuntur, qui cum aiunt deprehensionem in adulterio, & deinde reprobant opinionem Accursij afferentes sufficere adulterij præludia, & in §. secundo post relatam conciliationem, quod scilicet eius opinio intelligi debat de præludijs proximis, ita suam explicat Sententiam ibi: Sed proximis, vel in easu capit. litteris 12. de præsumpt. ubi ex deprehensione solius, & nudi cum sola, & nuda in eodem letto iacentis violenta, & certa fornicationis suspicio oritur ex qua Sententia diuortij promulgari possit. Attamen ne violentam quidem suspicionem hic sufficere luculentè ostendunt leges sub litt. I. adducta naque enim haec inuentio est vera in ipso alio Adulterij deprehensio, & ex causa ciuili in dicto cap. litteris ad plenam Adulterij probationem in Causa Criminali haud firmiter arguitur &c. cum

etum nemo ex suspicionibus damnari, nedum occidi queat lege absentem si de penitentiis, & ista violentia suspicio non est indubitatum indicium ad probationem, quale in criminali. requiritur leg. final. C. de probationibus, sed immo fallax est quia taliter inuenient potuissent sic agere, ut adulterarent, & tamen non adulterarint, ut loquuntur Grauett. &c.

Solumque de pœna temperanda agendum esset, si D. Inquisitus in actu deprehensionis Vxoris fugitiæ in Ospizio Castri novi cam cum D. Canonico illam associante occidisset, at cum neglecta vindicta facti maluerit eligere vindictam Iuris, vtique non potuit illam ex interhallo interficie, ut per Text. in l. quod ait lex s. final. ff. ad l. Iuliam de adulst. firmantem non posse vindictam post diem differti traduit Angel. de malefic. dicto vers. che hal adulterato la mia Donna num. 21. in fin. Farinac. qu. 12. num. 403. afferens ita in praxi seruari ne decur aditus te vlciscendi propria Auth. & cons. 141. per tor. & signanter num. 9. & seq., vbi confutat Bertalzol. cons. 42. patificantem casum deprehensionis in adulterio, & quod Vxor de illo conuicta sit ita ut non valeat de eo dubitari, nec sit iniusta, vel nimis facilis suspicio Viri assignans validum differentia rationem, quia iustus dolor iram excitans, que virtutem turbare solet verificatur in actuali deprehensione Vxoris in adulterio, & in aëribus proximis non ex interhallo, quamvis iulta sit eius suspicio, adeoque leges Maritum excusantes ex Causa Iusti, & inconsulti doloris, ut in l. graccus ad l. Iuliam de Adulter. & in l. nec in ea lege ff. eodem extendi non possunt ad vindictam ex interhallo sumptam, quia tunc nec impetus doloris, nec inconsultus dolor verificatur, & sedato animo homicidium patratum dicitur. Quod si ad restenandum impetum scientes doloris, ne propria autoritate Maritus vindictam sumat non excusat nec a pena legis Cornel. de Sicariis si Vxorem ex interhallo interficiat. quanto minus excusandus erit si electa via publicæ vindictæ per Carcerationem Vxoris, & prætensi Amalij longo interiecto temporis spatio eamdem una cum suis Genitoribus adeo in manu trucidauerit.

Accedit ad exasperandam penam, quod respectu infelicium Genitorum nulla superberat iusta Causa eos occidendi, nisi pro rati considerati velit lis mota super rescissione Instrumenti Dotalis ob Detectum Partum suppositum, quæ potius delictum extollit. ad atrocissimum Crimen læsa Maiestatis ob omnino modum securitatem, quam Pontificia Maiestas litigantibus in Urbe praebere voluit, ut ex nota Constitutione Alex. VI. §. 2. in princ. ibi: Horrenda inumanitate. detectandaque scutia mortem scientes aliorum: & in fine ibi: in Delicto Maiestatis offendendo Iurisdictionis, & authoritatis Apostolica lessone: & §. 4. circa medium ibi: ac læsa Maiestatis Criminis Seutendias incurvant ipso facto: & peccato post ibi: Sintque etiam in suis bonis omnibus as-

cun-

*cruelis perpetuò diffidati , nihilominus , & Banditi , ac infames ,
& inhabiles habeantur .*

Plurimum quoque considerari maretur qualitas adeò inhumanæ
necis in propria Domo patratæ , quæ debet esse vnicuique tu-
tissimum habaculum , ut per Text. in l. plerique ff. de in Ius vo-
cando , & in l. nemo 103. ff. de regul. Iur. ibique Petrus Faber , &
Euerard. tradunt Farinac. in fragment. Crimin. par. I. vers. Domus
num. 130. Clas. in §. final. quæst. 10. Gabal. cas. 13. num. 10. , & ele-
ganter Cicer. in Orat. præ Domo sua ibi : *Quid est sanctius quid
omni religione inunitius , quam Domus vniuersitatisque Ciuium , hic
aræ , hic foci , hic dū penates , hic Sacrae Religionis Ceremonia eon-
tinentur . Hoc perfugium est ita Sanctum omnibus , ut inde abripi
neminem , nefas sit : Multoque magis respectu misericordiæ Vxo-
ris , quæ in illa detinebatur loco Carceris approbante quoque
Domino Abbatे Francilchino , adeout publica securitas viola-
ta dici debeat , & læsa Maiestas Principis cum eadem ratio ha-
beatur de vero , & formalí Carcere , ac de assignato à Principe
firmant Farinac. quæst. 30. num. 47. Villos. de figit. cap. 18. §. 3.
num. 3. & sequen. D. Canon. Raina d. in prax Crimin. tom. I. cap. 3.
§. 2. ad 6. num. 146.*

Tandem est quoque consideranda qualitas Armorum prohibito-
rum cum quibus delictum fuit patratum , quæ de per se penam
mortis exposcit , quamvis ipsum Principale crimen esset mitius
puniendum , vt monent *Sanfelic. decisi. 43 per tot. referens ita
fuisse iudicatum Capic. latr. decisi. 78. num. 2. & per tot. & ibi
Adden. num. 2.*

Quare &c.

Ioannes Baptista Bottinius Fisci , &
Cam. Apost. Aduoc.

Illustriſſ. & Reuerendiss. D.
G V B E R N A T O R E

In Criminalibus:

**Romana Homicidij cum
qualitate.**

P R O

Fisco.

C O N T R A

**D. Guidum Francischinum,
& Socios.**

Iuris D. Aduocati Fiscalis.

ROMÆ, Typis R.Cam. Apost. 1698.

S V M M A R I V M.

Illustriss. Sig. Padrone mio Collendissimo .

MI giunge la sua fauorita lettera in data del dì 24. del c-
duto, e spiacemi sommamente l'agitazione, nella quale *Epistola Domini*
mi accenna ritrouarsi per le maledicenze, che vanno disse-
minando per Roma li Signori Pietro Comparini, e sua mo-
glie intorno à mali trattamenti, che dicono hauer riceuuti
nella di lei Casa nel tempo, che sono dimorati in Arezzo, e
ricercandomi ella di sincera informatione, le replica con
tutta ingenuità essere li medemi stati trattati da tutta questa
Nobiltà, & in sua Casa con tutto rispetto, e decoro, e la cau-
sa de primi disturbi, che nacquero trà essi, e la Signora sua
Madre, e Fratelli fù perche la Sig. Violante pochi giorni dop-
po giuntaui pretese dominar essa la Casa, tener le Chiaui di
tutto, & escluderne affatto la Sig. Beatrice sua Madre, al che
con ragione non hauendo voluto acconsentire veruno de
suoi Signori Fratelli, diede motiuo alle prime grossezze, e
contese domestiche, s'accrebero poi nell'offeruare, che il
Sig. Pietro sudetto lasciata la pratica, e conuersatione delle
Persone più qualificate di questa Città, si vniua con i più
vili, e con essi loro si diede à frequentare giornalmente
quante bettole v'erano, il che caggionò à lui di screditò, &
à lor Signori poca reputazione. Di scandalo molto mag-
giore sono state più fughe, e ricorsi fatti dalla Sig. Sposa lo-
ro figlia à Monsig. Vescouo, non con altro motiuo, se non
che ne essa, ne li suoi Genitori voleuano più dimorare in
Arezzo, mà tornarsene à Roma. Sgridata però da questo
prudentissimo Prelato, la rimandò sempre à Casa in Carroz-
za. Vero è pero, che doppo essere partiti da questa Città,
li Signori Comparini, la Sig. Sposa si è diportata fino ad ora
cô gran modestia, e sauziezza, da che prende indizio ogn'vno,
che à simili eccessi la pouera giouinetta fosse stata indotta
da suoi Genitori, come ella se ne dichiara con tutti, dete-
standone anche la memoria, onde si vâ restituendo nel con-
cetto vniuersale, e di queste Dame, che haueuano tralascia-
to di trattarla. In ultimo li medemi Signori Comparini haue-
uan leuate tutte le gioiè alla Sig. Sposa, che gli sforzai à re-

A

sti-

struitile . In somma sono tali, e tanti li scandali, che hanno dati nel decorso di più mesi , che vi sono dimorati a tutta la Città, che non gli ne scriuo che pochi, e l'accerto, che li Sig. suoi fratelli hanno hauuta con essi vna sofferenza da Martiri , si che vedendo Io, che erano venuti incorrigibili , e la fau-ja della Città , e che poteuano mettere in necessità li Signo-ri suoi Fratelli di commettere verso di essi qualche eccesso per regola di buon gouerno, mi volta à preualermi dell'autorità, che per sua gratia mi ha data S. A. S. col minacciarli di priggionia, e castighi se non si fossero corretti, doppo queste minaccie parendoli forsì di meritarli, e che li potesse succedere, deliberorono ritornare à Roma , come fecero poco doppo, lasciando di loro in questa Città vn peßimo concetto ; del resto al presente in sua Casa vi è vna grandissima quiete , e la Sig. Sposa viue con fauicza esemplare , detestando il male exemplo, che ha di se dato à queste Dame, confessando liberamente, che li venius commandato da suoi Genitori, & à mio giudicio è stata la mano di Dio , che ha liberati lor Signori da ceruelli così torbidi . Questo è quanto posso delineatli del molto più , che vi farebbe da dirle ; si tranquilli dunque , e creda , che il discreditò è stato tutto loro , ne restandoni , che foggiungerle mi confermo con tutto l'animo .

Di V.S. Illustriss.

Arezzo 2. Agosto 1694.

Deuotiss. & Obligatis. Seruitore
Vincenzo Marzi Medici.

Sig. Abb. Paolo Franceschini . Roma .

Num. 2.
Depositio Francifex.

Racconterò à V.S. la Causa , per la quale Io sono fuggita dalla Casa di mio Marito , & è che essendo tre Anni sono stata maritata qui in Roma dì mio Padre , e mia Madre al sodeetto Franceschino , e doppo essere stata sposata al medemo, si trattenne in Roma per lo spatio di due mesi senza consumare il matrimonio , e passaro d. tempo , fui condotta assieme colli sodetti mio Padre , e mia Madre dal sodeetto mio marito in Arezzo , perche nelli Capitoli matrimoniali si era conuenuto , che d. mio Padre , e mia Madre douessero venire ad habitar in Arezzo conforme fecero, e doppo effersi trattenuti colà

colà per lo spatio di quattro mesi se ne partirono , e se ne ritornorno in Roma per li mali trattamenti . che riceueuano , non solo da mio Marito , mà dagl'altri di sua Casa , & essendo io restata in Arezzo doppo consumato il matrimonio passato quasi vn Anno , ne riuscendo grauidà , cominciò d. mio Marito , & anco Beatrice sua Madre à voltarsi contro di me , perche non faceuo figlioli dicendo , che per causa mia si estingueua la sua Casa , e che non si poteua da me col tempo sperare successione , mentre esso mio Marito diceua d'auantaggio di hauer sentito dire da mio Padre , che in occasione di certa infermità da Zitella mi haueua dati certi semi per medicamento , che questi forse impediuva di far figlioli , e con questo motiuo lo veniuo continuamente ad esser maltrattata dal sodetto mio Marito , e Socera , benche io gli replicassi , che sopra questo non ci haueuo colpa , e continuauano tutta via à minacciarmi sulla vita , & andauano cercando ogni pretesto benche senza occasione per maltrattarmi , e poi il medemo mio Marito cominciò à prendersi gelosia di me , e mi prohibì , che non mi affacciasse alla finestra , & lo per togliergli questa occasione non mi affacciauo mai , mà tátó non bastaua , perche vn giorno stando sopra la loggia , il medemo disse , che stavao à far l'amore la sù alto senza nominarmi cõ chi , & Io gli replicai , che questi erano pretesti , e dal luogo sodetto non si vedea , che vna strada senza incontro di finestra delle Case , perche soprastaua d. loggia alli Tetti solamente , e perche poi il sodetto Canonico Caponsacchi con altri Giouani del Paese passauano auanti Casa nostra , e si fermauano a discorrere con certe Donnicciuole , che stanno in faccia il medemo mio Mariro cominciò à borbottare contro di me , per causa , che d. Canonico passaua come sopra , benche Io non hauesse in ciò colpa alcuna , e tanto più gli cresce il sospetto , perche stando vna sera alla Comedia trà molte altre genti il Canonico Conti fratello del Marito di mia Cognata , mi tirò alcuni confetti , e mio Marito , che ci era ancor lui lì vicino se ne adombró , mà non del Conti , mà del Caponsachi , che stava à sedere à canto il sodetto Conti , mà poi perche d. Conti praticaua in Casa nostra come Parente , prese ombra anco del medemo , in modo tale , che accortami di ciò , quando poi veniu a d. Canonico Conti in casa nostra lo mi ritirauo in Camera , perche non hauesse à darmi maggior trauaglio ,

Litt. A.

Recasent minas ob Ze-
lothyiam vii deAma-
fie .

mà mio Marito non si appagava di ciò, mà diceua, che io lo faceuo ad arte, e che nos gli si leuauano li sospetti, che haueua cnntro di me, e tornava nuouamente à tribularmi per cauia del Caponsacchi, in modo tale, che mi ero ridotta in diperatione, e non sapeuo come dire, e poi per togliergli anco quest'occasione passando vn giorno detto Caponsachi auanti Casa gli parlai, e lo pregai à contentarsi di non passarci per leuar me da tanti guai, che riceueuo per questa causa da mio Marito, & esso mi soggiunse, che non sapeua donde esso mio Marito cauasse tal motiuo, mentre esso passaua di là per altri affari, e che fialmente non gli si poteua impedire passare per strada, e benche mi promettesse di non passarci, tanto continuò à passarci, mà Io non mi affacciauo alla finestra, e con tutto ciò il sodetto mio Marito non si mai quietaua, e continuaua à maltrattarmi, e minacciarmi sù la vita, e che voleua ammazzarmi, anzi quando fù la cosa della Comedia raccontata di sopra, tornati che fussimo à Casa mi appuntò vna Pistola in petto dicendo - Oh Cristo chi mi tiene, che non ti stenno qui, ammiri bene il Caponsacchi, se non vuoi, che ti facci coi, e non ti ammazzi - anzi in principio dellli strapazzi suderti andai due volte da Monfig. Vescouo, perche hauesse rimediato in qualche forma, mà non seruì à niente per la corrispondenza, che haueua colla Casa di mio Marito ; Onde essendo Io in quella Città forastiera, ne sapendo in che modo liberarmi dalli pericoli, e strapazzi sudetti dubitando, che se non mi ammazzaua con armi, mi hauesse potuto auuelenare, pensai fugirmene, e venire in Roma da mio Padre, e Madre, mà non sapendo in che modo farmi, vn mesce fà in circa andai à confessarmi da vn P. di S. Agostino, che li diceuauo il Romano, e gli raccontai tutti li miei guai, pregandolo, che scriuesle in mio nome, perche io non sòscriuere, à mio Padre, con rappresentarli, ch'io ero disperata, e che ero necessitata partire da mio Marito, e venirmene da lui in Roma, mà non hebbi risposta, e così non sapendo à chi ricorrere per mettere in effecutione questa mia volontà, e pensando, che nessuno del Paese, ò per Parentela, ò per amicitia di mio Marito non mi hauerebbe assistito, finalmente mi tisolsi parlarne al d Caponsacchi, perche sentiuo dire, che era buomo rifulto, conforme passando vn giorno auanti Casa mia in tempo, che mio Marito era fuori di Città, lo chiamai,

B

Petras afferens nescire
scribere .

C

Fateris Amasis Pollen-
tiam, & Audaciam .

mai, e dalle scale gli parlai, con rappresentargli il pericolo, nel quale mi trouauo anco per causa sua, e che perciò lo pregauo à condurmi quà in Roma da mio Padre, e mia Madre, mà esso mi replicaua, che non volega in conto alcuno ingerrisi in questa facenda, perché sarebbe stato mal sentito da tutta la Città, tanto più, che esso era amico della casa di mio Marito, mà Io lo scongiurai tanto, e gli dissi, ch'era opera da Cristiano liberare dalla morte una pouera Donna forastiera, in modo tale, che l'indussi à promettermi, che mi hauerebbe condotto come sopra, & all' hora mi disse, che hauerebbe fermato il Calesse, e che quando fosse stato aggiustato nel passare, che haueria fatto auanti Casa nostra, me ne hauerebbe dato il segno con farsi cadere il fazzoletto, mà essendoci passato il giorno seguente, che lo stauo alla Gelsosia, non fece d. segno, & il giorno susseguinte essendo ripassato come sopra ci parlai nueuamente, e mi dolsi con esso, che hauesse mancato alla parola datami, e lui si scusò, che non haueva trouato Calesse in Arezzo, & io gli replicai, che in tutti i modi l'hauesse procurato anco di fuori, conforme promise di fare, e la Domenica ultima del mese passato ripassando auanti casa fece il segno col fazzoletto, come hauuea detto, e così essendo andata à letto con mio marito la sera, & essendomi accorta, che la notte dormiuva mi alzai da letto, mi vestii, e presi alcune robbicciuole di mio uso, una scattola con molte bagattelle dentro, & alcuni denari, che non so quanti fossero da un Sgrigno, che ce ne erano anche de miei proprii, conforme apparisce dalla nota tanto delle robbe, quanto delleni denari fatta dal Cancelliero di Castelnouo, e poi scesi à basso, che era l'alba, doue trouai Caponsacchi, & andassimo assieme à Porta S. Spirito, fuori della quale stava un Calesse con due Caualli, e Vetturino, e montati tutti due in Calesse ce ne venissimo alla volta di Roma con caminare notte, e giorno senza fermarci, se non tanto quanto si rifrescauano, e mutauano li Caualli, finché giungessimo à Castel nouo, doue arriuassimo all'alba, & iui poi fossimo sopragiunti, conforme hò raccontato di sopra à V.S. da mio Marito.

Respondit. d. Caponsachi non Parente in conto alcuno à d. mio Marito, mà bensì amico.

Respondit. Il sodetto Caponsachi prima del fatto, non mi bâ

D

Fatetur colloquium cfi
Amafio.

E

Fatetur noua colloquia
cum Amafio.

F

Mendacium circa Ad-
uentum ad Cafirum
nouina.

G

Amafius non est affius
Viri.

H

Noua mendacia quod
non recperit litteras
A masu , & nesciat scri-
bere .

I

Aliud mendacium quod
non inferit Epistolam
Amatio ,

K

Nescies scribere , ei as
Vt lineabat Epistolam.

mandato alcuna lettera , perche io non sò leggere il manoscrit-
to , e non sò scruere .

Respondit . Ne meno io prima del fatto sodata bò mai mandato
lettera di sorte alcuna al d. Caponsacchi .

Iterum constituta &c. Respondit &c. Io mentre stavo in Arcz-
zo lcrissi ad istanza di mio Marito all'Abbate Franceschini
mio Cognato qui in Roma , mà perche io non sapeuo scruere ,
esso mio Marito faceua la lettera col toccalapis , e poi mi face-
ua ripassarci sopra colla penna , & inchiostr da me , e mi diceua , che suo fratello hauuea gusto d'hauer qualche mia
lettera , che fosse stata scritta da me , e questo fù due , o tre
volte .

Responda. Se V.S. mi facessi vedere qualch'vna delle lettere
da me scritte come sopra , e mandate all'Abbate Franceschini
ni le riconoscere i benissimo .

Et ostensa &c. & Inter- &c. Respondit . Hò visto , e vedo be-
nissimo questa lettera mostratami d'ordine di V. S. che co-
mincia - Carissimo Sig. Cognato , sono con questa - e finisce - Francesca Comparini , ne Franceschini - Et hauendola
osseruata mi pare , mà non posso attestare per verità , che sia
vna delle lettere da me scritte nella conformità sodata all'
Abbate Franceschini mio Cognato &c. Et paucis interie-
ctis &c.

Interrogata &c Respondit . Io non hò mai mandate lettere di
sorte alcuna per Maria sodata à persona veruna .

L

Alind mendacium circa
Aduentum ad Cauponā
Castel noui .

Respondit . Io per la verità ariuai a Castel nouo al rosseggiar
dell'Alba .

Respondit . Noi ci fermassimo nell'Osteria di Castel nouo per
lo spatio di più di vn' hora , & in questo tempo ci trattenissi-
mo in Sala di sopra , & post pauca &c.

M

Noua mendacia quod
non cubauerit in capo-
ne Casti noui .

Interrogata Respondit . Io non mi misi à dormire ne riposare
nell'Osteria di Castelnouo per quel tempo , che mi ci fermai
come sopra .

Respondit . Sento , che V. S. mi dice , che la Corte pretende
in oltre , che Io la notte dormissi nella sopradetta Osteria di
Castel nouo in vna Camera di sopra , nella quale dormisse
anco il Canonico Caponsacchi , & Io dico , e rispondo , che
niuno può dire questo per verità , perche Io non riposai in
conto alcuno in d. Osteria , e mi ci fermai per il tempo da-
me detto di sopra &c.

Ca-

Carissimo Sig. Cognato.

Sono con questa à riuerire V. S. e ringratiarla delle operationi Num. 3.
fatte per collocarmi in questa Casa , doue lontana dalli miei *Episola Franci*-
Genitori viuo hora vna vita tranquilla , & vna salute perfet-*sca ad Abbatem*,
ta non hauendo li medesimi attorno , che mi contristauano *Francischinum* .
giorno , e notte con li peruersi loro comandamenti contro la
legge humana , e Diuina à non amare il Sig. Guido mio Ma-
rito , à fuggire di notte dal letto del medesimo , con farmeli
dire , che feco non ci haueuo genio , che non era mio Marito ,
perche feco non hò figli , e con farmi fare in più volte le fug-
he al Vescouo senza veruna cagione , con farmeli dire , che
Io voleuo fare diuortio col Signor Guido , e per mettere vil-
gran disordine in Casa , disse mia Madre al Vescouo , al Sig.
Guido , e poi per la Città , come il Sig. Canonico mio Co-
gnato mi haueua richiesto dell'Honore , cosa non mai pensa-
ta dal medesimo ; Mi stimolauano di continuo à consigli lon-
tani dal Giusto , e dalla Pace , che si deue al Marito col la-
sciarmi nella loro Partenza per espresso comandamento di
obedienza ad ammazzare il Marito , e dare il veleno alli Co-
gnati , e Socera , ed incendiare la Casa , à rompere vasi , & al-
tro , acciò non paresse doppo partiti , che fosseno stati loro ap-
presso il Mondo , che mi consigliauano à fare tante seggierz-
ze , & in fine della loro partenza mi lascioro , che Io mi sce-
gliessi vn Giouane à mio genio , e che feco me ne tuggissi à
a Roma , e tante altre cose , che per rossore tralascio , hora , che
non hò chi mi solleui la mente , godo vna quiete di Paradi-
so , e conosco , che li mie Genitori mi guidauano per loro
pazzia al precipizio , onde riconoscendo li spropositi fatti
per comandamento delli miei Genitori , ne chiedo perdono
à Dio , à V.S. à tutto il mondo , volendo essere buona Cri-
stiana , e buona moglie del Sig. Guido mio , quale tante vol-
te mi sgridaua con maniera amorosa dicendomi , che vna
volta l'hauerei ringraziato delle riprensioni mi faceua , e di
quelli cattiuoi , che mi faceua conoscere , che mi davaano li
miei Genitori , e mi confermo . Arezzo 14. Giugno 94.

Affezionatiss. Serua , e Cognata .
Francesca Compatini ne Franceschini .

Num. 4. *Foris - Al Signor Abbate Paolo Franceschini. Roma.*

Epiſtola Franci-ſcripta Domi- no Abbati Fran- ciscino. Intus verò. Carissimo Signor Cognato. Hò riceuuto il ventaglio donatomi da V.S., quale è ſtato di mia ſodifattione, l'hò gradito, e la ringratio, mi dispiace, che li miei Genitori lacerino ſenza ragione la noſtra Caſa, Io per me ſtò bene, e contenta, non hauendo hora chi mi fomenti al male, voglio bene à tutti di noſtra caſa col ſanto timor di Dio. In tanto ſi rida delle maledicenze delli miei Genitori, mi commandi, e la riuerifco di cuore. Arezzo 19. Luglio 1694.

Obligatissima Serua e Cognata
Francesca Comparini Franceschini.

Num. 5.

Examen D. Ca- nonici Caponsac- chi. Io doueuo venire in Roma per accommodarmi, e lo confidai con il Canonico Gio: Battista Conti parente del Franceschini, che praticaua in Caſa de me demì, ſtimò, che detta Francesca l'haueffe potuto ſapere dal medefimo Canonico, ſe bene anco per là Città ſi diſcorreua della mia venuta in Roma, che doveua ſeguire vn pezzo fa, onde mi fu *vn giorno portata una lettera* da vna tal Maria, che in quel tempo era Serua di detto Franceschini mandarami da detta Francesca, nella quale mi diceua, che haueua ſentito la mia venuta in Roma, e perche ſuo Marito la voleua ammazzare, haueua riſoluto di venire in Roma dà ſuo Padre, e che non ſapendo con chi confidarsi, mi richiedea à volergli fare il ſeruitio accompagnarla come ſopra, & io gli riſpoſi, che non voleuo far queſta coſa, ne metterimi à tal cimento, *che gli ſcriffi la riſposta per l'iftessa Serua*, che io non mi ricordo il tempo preciſo, che mi mandaffe la lettera ſudetta, e doppo continuò à farmi la ſu detta iſtanza con buttarmi alle volte dalla feneftra, mentre io paſſauo auanti Caſa ſua qualche polizino, con reiterarmi l'iſtanza ſudetta, & io gli replicauo, *mandandogli la riſposta per detta Serua*, dicendoli, che non voleuo ingerirmi in tal facenda, e perche ultimamente mi buttò vn altro poliſino dalla feneftra, per quanto riſeppi fu veduta da vn artegiana teſſitrice in faccia, che non ſò come ſi chiami, e questa lo riſerì al Marito, perche la medema Serua eſſendo ſtata licentiata, mi diſfe, che era ſtato rumore in Caſa per la cauſa ſudetta, e che la Sorella di detto Guido maritata in caſa Conti haueua detto di più, che eſſa Serua mi haueua portata la lettera, e che perciò detto Guido diſfe, che voleua ammazzare la

Moglie

Litt. B.

Litt. C.

Moglie in tutti i modi doppo passato qualche tempo , e che anco si sarebbe vendicato coistro di mè , & io con questo motiuo per liberarmi da qualche impegno , e pericolo , & anco per saluare dalla morte detta Francesca , mi risolsi di venirmene à Roma , & accompagnare la medema quà per condurla da suo Padre , e così vna sera , che non mi ricordo del tempo preciso , passando da Casa sua gli diedi una lettera , che la tirò dalla finestra , ma con una cordicella , colla quale l'auisauo , che per liberarla dalla morte , io l'hauerei accompagnata come sopra , & essa vn'altra sera mi gettò dalla finestra una lettera , con la quale mi rinouaua l'instanza sudetta , rappresentandomi , che il Marito tuttaua la minacciaua d'ammazzarla , che perciò hauerebbe riceuuto il fauore , che io gli diceuo di accompagnarla come sopra . & ultimamente la Domenica ultima del passato mese d'Aprile passando auanti Casa sua , e stando lei alla finestra , gli dissi , che hauemo fermato il Calesse per la matina seguente à bon' hora , e che l'hauerei aspettata alla porta di S. Clemente , conforme alle sette hore in circa , venne sola alla porta sudetta , & entrati in Calesse girassimo fuori le mura della Città per andare alla porta di S. Spirito , che và verso Perugia , che il Calesse era di Agostino Oste in Arezzo , che lo conduceua vn Vetturino detto per soprannome Venarino Garzone di detto Agostino , che lo feci uscire la sera di Domenica all'Ave Maria dalla Città , e poi seguitassimo il viaggio senza pernottare in luogo alcuno , e cfermauamo tanto , quanto bisognaua rinfrescare , e mutare li Caualli , fin che giungessimo il Martedì à sera ultimo del sudetto mese di Aprile in Castel nouo , e perche detta Francesca disse , che si sentiu alcuni dolori , e che non gli dava l'animo di seguitare il viaggio senza riposo , si buttò sopra al letto in vna Camera così vestita , & io parimente vestito mi posì sopra vn'altro letto , ch'era in detta Camera , con dire all'Oste , che doppo trè , ò quattr' hore ci hauesse auuisato per seguitare il viaggio , mà non ci auuisò , e sopragiunse in tanto il Marito di detta Francesca , e ci fece arrestare dalla Corte tutti due , e dilà poi fossero condotti in Roma .

Respondit. Io non hò parlato in Arezzo à detta Francesca altre volte , se non quanto hò raccontato di sopra à V. S.

Respondit. Il Marito della detta Francesca non mi è parente in grado alcuno .

Lett. D.

A 5

Lett. E.
Ama sius non est affinis D. Guido.

Re - nis.

Respondit. Io non hò professione alcuna , mà sono Canonico della Pieue di S.Maria d'Arezzo, e sono semplicemente Sod-diacono .

Respondit. Quando fui carcerato à Castel nouo furon trouati certi denari , e certi Anelli con altre robbe , conforme la nota fattane dalla Corte .

Respondit. Io non hò mai scritta alcuna lettera alla sudetta Francesca , se non quelle da me dette di sopra .

Respondit. Le lettere mandatemi come sopra da detta Francesca , furono da me abbrusciate in Arezzo .

Respondit. Benche nella Carcere di Castel nouo , doue io fui posto fosse fatta diligenza dalla Corte , & anco dal Marito di detta Francesca non vi fu ritrovato cos'alcuna .

Respondit. La sudetta Francesca nel partire d'Arezzo portò se-co vn'Inuolto dell'i suoi habitii , & vna Scattola , nella quale disse , che vi fossero gioie , ma io non le viddi , & anco in vna pezzola con alcuni denari , che furon poi descritti in Castel nouo da quel Cancelliere .

Respondit. Non sò precisamente da chi fossero state scritte le lettere mandatemi da detta Francesca , mà io suppongo potessero esser state scritte da lei , mà non sò se sappia scriuerre .

Respondit. A Castel nouo nell'Osteria , & in quella Camera , doue ci fermassimo , come dissi nell'altro mio esame , e che ci erano due letti , ne fu accomodato vno solo colle lenzuoli dal Cameriero dell'Oste , perche seruisse per la Signora Francesca , e nell'altro non ci feci mettere lenzuoli , perche io già non voleuo spogliarmi , se bene non si spogliò ne meno lei , conforme dissi nell'altro mio esame .

Respondit. Se io vedessi qualche lettera di quelle da me scritte alla Sig. Francesca sudetta le riconoscerei benissimo .

Respondit. Hò visto , e vedo benissimo queste due lettere , che stanno ligate in questo processo mostratemi d'ordine di V. S. che vna comincia , Adorata mia Signora , vorrei sapere , &c. e finisce , mi hà detto il Conti , & hauendola ben considerata , dico , che questa lettera non è stata da me scritta , benche il carattere della medema habbia quache somiglianza al mio carattere , & hò anche veduta quest'altra lettera , che comincia , Amatissima mia Signora , Riceuo , &c. e finisce questa mia , & hauendola ben considerata , dico , che la medema non è sta-ta

ta in conto alcuno da me scritta , non è mio Carattere , anzi non vi è ne anco somiglianza al detto mio Carattere in conto alcuno .

Respondit. Io non hò parlato in Arezzo alla Sig. Francesca , se non che tanto quanto gli parlauo dalla sencstra , conforme hò detto nell'altro mio esame .

Respondis. Io non hò mai riceuute altre lertere dalla sudetta Sig. Francesca concernenti altra Causa , se non quella della fuga per venire à Roma , conforme hò detto negl'altri miei esami .

Respondis. Io resto marauigliato , che il Fisco habbia pretensione , che dalla sudetta Sig. Francesca ananti seguisse la di lei fuga mi fossero trasmesse più lettere Amoroſe , eſſendo la mede- ma vna Giouine modeſta , e queſte coſe ſarebbero ſtate fuori del proprio ſtato , e della ſua naſcita , e però dico eſſere la ſudetta pretensione falſa , & inuifitente .

Respondis. Io torno à dire à V. S. che nella Carcere in Castel nouo non fù trouato dalla Corre cos'alcuna , e fe V. S. mi dice , che foſſero trouate alcune lettere Amatorie , le quali poi pretende il Fisco , che ſiano quelle mandatemi dalla ſudetta Sig. Francesca , dico , e riſpondo , che non è vero niente .

Foris - All'Illustrissimo Signore Oſſeruandissimo , il Sign. Paolo Franceschini - Roma .

Intus verò - Illustrissimo Signore Oſſeruandissimo .

Vedo quanto piace à V.S. di ſignificarmi intorno alle controverſie , che paſſano trà il Signor Guido ſuo fratello , & il Sign. Compatini , e non poſſo non compatirle per il diſturbo , che ne deriuā à V.S. in vn caſo così raro , e forſe ſenza eſempio . Fece qualche ricorſo à me la Signora ſua Cognata , ma ſi co- me il calor grande , che haueua con vna ſouerchia paſſione , della madre , mi appaleſorňo , che la figlia faceua queſto paſſo per pura iſtigazione , coſì procurauo di appiaceuolirla , penſando , che tolti i ſomenti , ſi ridurrebbe al giuſto , potendo tanto più facilmente crederlo , quanto che la ſua tenera età , tanto diceua , e tanto reclamaua , quanto era forzata à farlo per il fomento della Madre , e perche non ſi eſasperaffe anche queſta maggiormente , la feci accompagnare ben due volte à caſa dalla mia Caſſoza . Haueuo qualche cognitione di ciò perche il Signor Senatore Marzi Medici , che preſiede al go- uerno Laico in queſta Città per il Sereniffimo Gran Duca , mi

Num. 6.
Epifola Reue-
rendissimi Epi-
ſcopi Aretini .

mi haueua communicato il tutto , e non mi resta da soggiungere altro, se non rapportarmi à quanto il medemo sopra ciò gli hà sinceramente scritto, e bramando nuoue occasioni di seruitla , mi confermo

Di V.S.

Arezzo 15. Settembre 1694.

Deuotissimo Seruitore
G.M. Vescouo d'Arezzo

Amato mio Signore .

Num. 7.
*Epiſtola Amato-
eia reciprocæ.
prima fol. 10.*

Non moltiplico attestati per accreditarui il mio amore , perché à sufficienza n'è testimonio la mia risolutione , & il vostro merito . Il mio affetto non hà più freno &c. Di gratia la renda à chi glie ne porge .

Mio Signore .

2. 11 Li dico , che non prenda ammiratione , se la Signora Madre stava alla finestra , perché ammiraua à quello , che aspettava la canepa , e però V.S. ci puol passare senza paura . Io più à bell'agio li scriucrò delle belle cose &c. quando mi diranno niente , lo farò auuisato à V.S.

Adorato Mirtillo , Anima mia .

3. 12 La prego à perdonarmi , se io non vi mirauo , quando eriali Cappuccini , perché io vedeuo , che tutte due mirauano , se io vi mirauo , e per questo io patij pene in non poter mirare il mio Sole ; ma mi vedeuo col mio core , nel quale vi tcnco scolpito . Resto qual sono , e farò
V. deuota Seru. e fedele Amante
Amarilli.

Amato mio bene .

4. 13 Io riceuo la sua , quale mi dà molta pena &c. , che il geloso vedeſſe le lettere , le vidde , ma non le aprì , che erano strette insieme , e lui creſe , che fuſſero altre earte , e non le preſe in mano ,

no . Questo lui lo dice, perche vorria, che voi vi adirassi con me &c. Poi voi mi dite, se io sono del medesimo pensiero ; & io vi dico, che sì, che le voi non siete mutato, io sono pronta à fare quello, che io hò detto &c. Poi in circa, se si seguita à bere il vino rosso, vi dico di sì. Se voi siete del medesimo pensiero: Se poi siete pentito, io sono contenta di fare quello, che volete voi &c. resto quale sono

Fedele Amante .

4.
13. 19.

Amatissimo mio Signore.

Io non sò per qual causa non passò di quà hieri sera , che io mi feci alla finestra,e non viddi nessuno . Io mi leuai dalla finestra , perche vi era il Canonico mio Cognato ; Mi leuai per andare all' altre finestre , acciò non mi vedesse &c. Ma voltaste in verso la porta , strada vostra amata , perche ci, è chi adorate Il Conti mi ha chiesto quelle ottaue, che mi haueute date &c., però ditemi, se io le hò à dare, ò pure tirenere care per me, e resto qual sono, e sarò

Fedele, e fedelissima Amante

Amarilli .

Mi scordauo dirli, che la Signora Madre non ha più febre, e beue il vino, ma da se, pure è rosso , come il nostro , pure ditemi quello hò à fare , che io lo farò . Lasciauo di mandarui vn millione di baci, ma sò, che in questo modo non vi sono cari, e poco, se ve li dassi da me, ma quelli della Cantarina vi sono carissimi, ma vi dico, che sono auuenienti &c. , e fate lo scrupoloso con l' altre, come haurete fatto con me, che con l' altre ne haucrrete ragione ma con me non ne haueuuo occasione &c.

14. 5.
15. 6.

Offeruandissimo Narciso .

Questa sera riceuo la sua, e mi dà gran consolatione il sentire , che non siete adirato &c. , non sò quando me la darà, ma se me la dà, la darò à voi . Il Gelofo è di fuori, e ci farei ancor io, e tutti, ma perche la Signora Madre non troua vna Seruai &c. hanno detto, che ci vonno stare vn pezzo , perche voi mi vsciate di mente per non vederui per vn pezzo; Ma chi ti ama

di

16
7.

di buon cuore , si tiene à mente , così farò io , prego V. S. à perdonarmi , se mi stendo troppo per scriuere troppo spesso , rassegnandomi quale sono

Deuotissima Serua,e fedelissima
Amante resto.

Amatissimo mio Signore .

7. 16. Si puole immaginare con qual prescia io vi scrissi quelli due versi &c. M'incontrai col Signor Dottore, come al solito , mi disse dove io andaou,e per la strada mi disse, perche gl'haueuo scritto dispettosa , io gli dissi , che meritaua peggio , perche faceua fatti cattiuoi , e buone parole, perche diceua di volermi bene, e poi lo vuole alla Souara,& altre &c. mi rispose che non veniuva da questo,ma per cagione di vn'altro Signore , che ci voleuo bene,più garbato di lui . Io gli dissi,che se non era garbato quanto lui,almeno più fedele &c. professandomi quale sempre fui fedele .

Mio adorato,e ruerito Signore.

8. 17. Sono con questa mia à scusarmi dell'errore , che hò commesso in sigillare quella lettera , che andaua à Roma &c. , dico à V.S. , che non mi hanno trouato nessuna lettera , perche io non le metto nella cassa , ma bensi le dò alle fiamme , & in quel tempo , che io le tengo , le tengo in seno , e questa non è scusa , perche lei faccia riflessione à vna mia , che vi dico , che gli dò luogo nel mio seno &c. in quanto , che uno di loro fosse alla gelosia, forse lo credo , però voi non fate gesto nessuno , quando sete sotto le finestre Io questa sera farò alla finestra , ò pure alla gelosia, e quando vi vedrò , mi farò alla finestra , ma bisogna che stia auueduta,che lui non mi veda,che mi hà detto , che se mi vede vuol far tante cose , ehe non ne fece tante Enea Troiano . Io per non darli sospetto , non ci stò , mi professo

Deuotissima Serua.

Sospi-

Sospirato mio Bene.

Se il dire, che io non vi amo non è errore, per non conoscermi,
ma questo per non gradirmi, consentite mio caro, che io mi
sfegni con voi, perchè d' mi riputate cieca, d' non mi ripu-
tate amabile. Non potete dire con verità, che io non vi ami,
d' potete dire con verità, che non vi ama tanto, quanto io amo
voi. Miratemi ne' miei occhi, che reca merauglia teresi dal-
le mie lacrime vi faranno fedelissimi specchi, scorgere e,
che il vostro volto è copiato, nella quale fè di lui abbozza-
ture nel Sole, che la vostra bianchezza neuicata in sìo del-
la via lattea, che le gratici vi hanno regolato i mouimenti di
propria mano, che Venere nel formarvi ha presa la misura
col proprio cinto delle vostre membra. Ah, che io vi amo,
in maniera, che da un canto vorrei amarvi sola nel Mondo,
perche mi pare poterui amare per tutti dal Latio centro.
Vorrei, che tutti vi amassero, perche vedesti, che posti tut-
ti insieme non giungono all'amor di me sola. Il mio petto è
invidiato da qualunque altra parte di me, quasi habile sia so-
lo ad amarvi. Sono cose da non sapersi vdire, sono cose da
rendere scusabile à qualunque altro, che non lo creda; Ma
voi bello crudele, che se vi vedete il volto composto di mira-
coli Angelici, non douete stimare menzogna, che si troui un
core fabricato d'amorosi miracoli &c. vilascio mille, e mil-
le baci.

Amato mio Bene.

Lascio andare li complimeuti per non poter corrispondere al-
li suoi versi tanto galanti, tutto il contrario di quello, ch'io 19. 10.
merito.

Lei mi dice, che vuol sapere ciò, che è seguito in casa, io vi di-
co, che non vi è seguito niente per quanto mi posso auue-
dere, perche non mi hanno detto niente nessuno di loro. Ma il Signor Guido mi par più tosto in bona con me, che al-
terato, e perciò non posso vedere, se sijno stizzati con me. Mio Cognato ferri la porta, lo fà più volte &c. Se poi non
ci volete passare più, questo è vostro arbitrio, et io prende-
rò in piacere quelle pene, che vi sono grate, e perciò io vi
dico, che fate quello, che volete, che come l'oro nel foco, co-
sì l'Amo-

sì l'Amore nel dolore si affina , posso ben dire , che patirò pena à non vederui, come ero solita &c., e dandoui vn' amoro bacio, resto quale sempre fui suiscerarissima Amante . e fedelissima Serua.

Mi si era scordato auuisarui, che stò nella medema stanza di prima , e Giouedi sera andai à letto à due hore di notte , e perciò lei non mi senti entrar in Camera . Difsi alla Serua , che facesse li segui , che era restato di fare &c.

Sabato mattina tornò il Sig. Guido , e lei potrà passare la sera à quattr'hore , ò prima , che vedrà il lume in Camera &c.

Carissimo mio Bene .

xi. 20. Riceuo la sua à me gratissima , come tutte l'altre mandatemi &c. Sento , che lei hà hauuto caro il Pastor Fido . Mà vorrei , che lei lo imitasse , & io imitarò vn' altra Vienna . Sento da lei , che vorrà venire à vederini alla Villa &c. che vorrei poter fare io , vi farei più volontieri per Sposo , che per Servo . Lei mi dice , che il Conti non vuol portarui più lettere , vi fò saperre , che io li fò due vezzi , e mi abasta l'animo di fare , che ve le porti , perche io gli dico due buone parole , e lui s'incanta , e farrà quello che io vorrò . Mi dice , che li mandi la corda per la Gelosia , mà non mi dice la sera &c. Li faccio sapere , che il geloso è ito à Souara , s'io vi potessi parlare ; mà il Confessore non vuole in conto nessuno , e per questo io non vi ci faccio venire , che hora non si apre più l'uscio di strada ; mà potrete aprire quello della Rimessa &c. Mà quel Frate non vò , e non vole . La ringratio dellí Baci , che m'inuiate ; mà se me li dassuo da voi , gli hauerei cari , & io ve ne dò altri , e tanti millioni di quanti me ne date voi &c.

Fedelissima Amante .

Io non sò , che nome mi dare à Vienna , à Amarilli , à Dorinda , à Lilla , mà voglio dirmi Arianna , quale credo d'hauere à esfere , voglio dirmi tale , se pure voi non sere vn Teleo , mà vn casto Giuseppe , à vn caro Narciso , à vn Ilago , à Fedone ; mà Adone fù pietoso con Venere , mà io non sono tale ; mà bensì vna Medusa . onde merito &c. Se voi hauete letto il Tasso lo saperete chi fù questo &c.

Amato

Amato Idol mio.

Sento le cose , che vi sono occorse , io non l'hò per male, mentre lei dice, che non si puol fare dormire mia Madre, mentre stà male , e non beue vino, e perciò non possa dormire . Puol essere , che in questi giorni guarisca , pure glie lo farò auisato , &c. 12. 21.

Fedele Amante Amarilli.

Adorato , riuetito , amato mio Core.

Mi confondo in tante lodi &c. mi scriua più spesso , che puole. 13. 22.

Circà il Dottore , lei m'offonde in dirmi , che io tornerò ad amar lui ; Vi dico , che se nascesse al Mondo vn Sole, non hò Cuore per altra Piaga; mà chi mal fà, mal pensa &c. In quanto à quello , che vuol sapere del *Vino*, vi dico, che è rosso per hora : mà più in quà non sò , come fa à ; mà ve lo farò auisato , mandandoui mille , e mille , e mille , e millioni di baci , resto .

Questa sera venite ad vn' hora di notte, che vi voglio parlare , e tossite quando sete sotto la finestra . 14. 26.

Amarilli .

La Sgrana perche non poteua dire, come dite qui, che era di latte- che lei è nera più di mè, se fussi voi vi potria dire Auorio, come vi chiamo Io ; Auertite , che la sera non sia il Gelo so, e non io, però io tossitò, se non sentie tossire non vi mouete.

Vi faccio sapere, che il Sig. Guido và fuora, ci starà più giorni; 16. 28.
Però la prego venire la sera quasi ad vn hora di notte, e come sete sotto la fenestra , tossite , e fermateui vn poco , acciò io non sbagli . Lui và fuori Lunedì mattina &c.

Carissimo , meritissimo mio Amore , mio Bene .

Rendo infinite gracie della Rosalinda &c. Vorrei sapere , che cenni mi fece per la via del Poggio &c. e non perche io voglia far proua del vostro Amore , che sò molto bene, che sete costante quanto mè , e però io non voglio far queste proue &c. siche voi non potete dire, che io non vi voglia più bene, perché tutto quello, che voleuo al Signor Guido è volto à voi, che lo meritase . 17. 29.

Amarilli .

Ado-

Adorata mia Signora.

18. 30. Vorrei sapere , se Domenica sera , cioè dimani à sera potete
Littere Amasy. partire , perchè se non si parte dimani à sera , Dio sà quando si potrà per la scarsezza de Caleffi , douendo Mercordi partire il Vescouo con tre Caleffi , perciò se potete partire , subito letta questa mia ritornate alla finestra , e gettatemi la medema per segno , acciò fermi vn Caleffe auanti , che sia fermato da qualchedun' altro , & io se fermarò il Caleffe dimani , nel passar di costì mi lascerò cadere la pezzuola vna sol volta ; del resto poi dimani à sera io mi tratterò dalle due di notte fino à quanto bisognerà , e lei subito , che vede , che sono dormiti bene , mi aprirà , acciò gli possa dare aiuto à far li fagotti , e mettere assieme i denari , sopra il tutto cerchi di mettere in tuti i Boccali , e lei non ne beua , e se per cattiva disgrazia lascoprissero , e la minacciassero di morte , opra pure la porta , che , ò morirò con voi , ò vi liberarò dalle loro mani , e pregando il Signore Dio , che ci facci riuscire bene questo nostro disegno , mi ratifico per sempre vostro fedelissimo Seruitore , & Amante .

Mirtillo .

19. Che il Geloso si mostri rappacificato , e che habbi detto , che stiate alla finestra , è vn cattiuissimo segno , perchè in questo modo vorrà scoprire cosa fate alla finestra , & à che fine ci state , perchè mi hà detto il Conti , che hora è più geloso di prima , e che se viene in chiaro di nulla , si vuol vendicare condarcia la morte , e che vol procurare di fare il simile à mè , e questo è quello , che successe , ci è seguita poi la rottura della corda .

Amatissima Signora .

20. Riceuo i suoi caratteri abundanti di quelle espressioni , (e seguono parole amorose .) Si compiaccia riceuermi nel suo seno , nel quale riposo tutti i miei affetti &c. Consegni alle ceneri questa mia .

Riuerto Signore .

'Alia littera
Francisca.
21. 32. Spinta dall'affetto , che io porto à V.S. sono sforzata di contraddirà à quello gli mandai hier sera in quella lettera , che gli diceuo , che io non voleuo più dirle , che lei ci venisse , se non lo diceua lei , hora le dico , che vorrei , che lei ci venisse questa

sta sera all' hora di hier l'altra sera, perche io ho pensato, che le Torri non si mouono cosi à colpi leggieri, se lei ci vol venire, purche non sia occasione, che lei manchi di parola à qualche sua amata Donna, ò pure gli sia d'incommodo, quale io non vorrei esser causa; però se ci vol venire, ripassi di qui subito, che Ici l'ha letto &c.

Die Martis 24. Septembris 1697.

Num. 8.

Ioseph Maria Caponsacchius de Aretio pro complicitate in fuga, & decuilatione Franciscæ Compartinæ, & cognitione carinali eiusdem relegatus per triennium in Ciuitate Vetula . Decretum Religatiois Amasij.

Illustriſſ. & Reuerendiss. Dño.

Vrbis.

G V B E R N A T O R E

In Criminalibus.

Romana Homicidiorum.

P R O

**D. Guidone Francischino, & Socijs
Carceratis.**

Summarium.

ROMÆ , Typis R. Cam. Apost. 1698.

Romana Homicidiorum.

III.^{me}, & Reu.^{me} Dñe. **C**onfessio D. Gu-
donis, & Socio-
rum super homicidijs Franciscæ vxoris, & Petri, ac Violan-
tis de Comparinis saceri, & socrus tantum abest, quod Fisco
opituletur ad exigendam pœnam ordinariam, quin potius
nobis mirificè faueat pro exclusione illius pœnæ, quia non
amplius est ambigendum de causa homicidiorum, nempe
honoris, quæ primò à Fisco controuertebatur ob concursum
aliarum causarum, quamvis vel essent inefficaces, vel de di-
recto lèdent honorem, ut infrà illotis manibus non per-
transibimus; nam confessio acceptanda est cum omnibus suis
circumstantijs, nec ad supradictum effectum patitur scindi,
Menoch. de Arbitr. cas. 279. num. 6. & seq., Clar. S. fin. q. 55.
num. 16. vers. forte posset, Gomez. var. resol. tom. 3. cap. 3. n. 26.
post medium vers. unum tamen est: Farinac. quæst. 81. num. 157.,
Guazz. defens. 32. cap. 35. num. 1. vers. sed contrarium, & nu. 2.,
Sperell. decif. 64. num. 16. par. 1.; & decif. 108. nu. 36., &
decif. 136. uum. 27. par. 2.

Quod pro certo sufficeret, ut mitius cum Eo, & Socijs ageretur,
attento quod causa honoris est sufficientissima ad lciuendam
pœnam, ut in alia probauimus, quod scilicet absque incursu
pœnæ vltimi supplicij possit Maritus etiam ex interuallo ob-
truncare Vxorem Adulteram, quoties adulterium probetur,
ut Dominus meus Fisci Aduocatus concedit in eius Respon-
sione §. *Solamque suspicionem.*

Et in rei veritate adduximus in alia quamplurimas Supremo-
rum Senatum Decisiones, quibus liquet fuisse minoratam
pœnam Maritis, qui etiam mediante Assassinio occidi fece-
runt Coniuges, & viceversa nulla affertur Decisio Fisco fau-
rabilis; Qualis sententia eò libentiùs amplectenda est, quia
à maiori numero DD. canonizatur; Et licet *Farinac.*, & Do-
minus meus *Raynaldus* contrarium sectari videantur; nihilominus
Farinac. in suis questionibus nimis se dubium reddidit,
ut in alia ostendi, & in *conf. 141.* nimis inconstantem se pre-
buit, dum in *conf. 66. num. 5.* contrarium probauit: Quamob-
rèm de huiusmodi inconstantia admonitus se excusando af-
seruit in d. *conf. 141. sub num. 16.* *Beatricem*, pro qua scripse-
rat

A

Beatriu Gencii.

rat in cons. 66. fuisse capite obtruncatam, quasi quod huius modi rigorosa sententia in practica seruetur, sed parcat mihi tam eximius Doctor, nimis incongruè respondit oblitus, quæ in fine d. consilij 66. scripta reliquerat, hoc est fuisse punitam Beatricem poena vltimi supplicij, non quia ex interualllo occidi mandauit insidianem suo honori, sed quia eius exceptionem non probauit ibi. — Prout, & idem firmiter sperabatur de sorore Beatrice se propositam excusationem probasset, prout non probauit.

Dominus verò Raynaldus, cuius scripta, & verba veneror in suis Observationibus Criminalibus cap. 2. §. 4. num. 156. præter quamquod afferit ex benignitate Principis sperari posse remissionem saltem quo ad pœnam ordinariam, non decidit articulum afferendo Gizzarell., & Giurbam firmantes debere ex iustitia pœnam minorari, sed se remittit ad ea, quæ scripsit cap. 7. in Rubrica sub num. 60. vbi tamen ex professo non examinat articulum homicidij admissi ex causa honoris, aliàs contrairet communi sententiæ Doctorum, & tot Decisionibus Supremorum Magistratum, hoc est Communi Tribunalium praxi, de qua etiam testatur Clar. S. Homicidium sub n. 51. ibi. — Et hac opinio seruat in præficta, prout in contingentia facti reperio iudicasse Curiam Neapolitanam. Et de eadem praxi similitè testatur Mattheu de re crimin. controvers. 12. num. 29.

Quamuis nobis sufficeret, vt dixi, quod D. Guido non sit legitimè conuiditus, vt eius confessio in totum sine diuisione acceptetur: Nihilominus ad abundantem adducimus plenas probationes A adulterij ex Processu fugæ resultantes, quas ne Fiscus daret manus viæcas impugnare conatur, & Achilles suæ prætensionis est vnicum examen ad perpetuam rei memoriam in Processu non redactum, sed extrâ vagans cuiusdam vilis mulierculæ olim famulæ in domo Inquisiti ab ipso, à D. Canonico eius fratre, & ab istorum matre percussionibus male multata, nimis affectatè recensentis pessima tractamenta facta Petro, & Violanti de Comparinis, ac Franciscæ eorum filiæ, & vxori respectiue, præcipue circa victimum, qua de cœla Petrus, & Violantes satius duxerint Romanum reuerti, Summar. Fisci num. 1. quamvis D. Guido per Instrumentum se obligasset prædictis Coniugibus alimenta præstare; Et insuper infertur necessariam fuisse fugam Franciscæ minis

minis mortis affectæ, vt ex ea deduci nequeat prava voluntas violandi matrimoniale fædus.

Sed si veritatem amamus res familiaris inquisiti non est adeò angusta, vt nedum ad frugaliter, sed etiam ad lautè viendum non exuberasset, vt demonstrat furtum pecuniarium à Franciscā in aqua fugæ commissum, vt in Processu fugæ fol. 5.

63. 92.

Causa vera, & realis, quæ mouit Petrum, & vxorem ad regredendum Romam ea infallibiliter fuit, quia mater D. Guidonis tolerare non potuit, quod prædicti Coniuges de Compatrinis rem domesticam moderarentur, & ad eorum libitum disponerent omnia ad gubernium domus spectantia, quod flagrantissimè, sed non minus audacter cupiebant, & quia male insuper cerebat Petrus reprehendi, quod relicta Nobilium Conuersatione cum vilissimis assidue non sine honestorum Virorum scandalio ad Cauponas se sociabat, & fortius, quia coactus fuit à Præside Ciuitatis carcerationis mētu restituere iocalia, & gemmas eius filiæ ablatas, vt D. Guido in suo examine deposituit 96. & 97., & mirificè comprobatur ab epistola eiusdem Præfidis à nobis nuper producta, quamdamus in *Summar. num. I.*

Quibus adstipulatur examen iudiciale eiusdem Franciscæ in fuga carcerata, in quo nullibi legitur fuisse malè tractatam, nec unquam conquesta est de domus decantata paupertate, & nihilominus est valde probabile, quod ad cohonestam fugam deduxisset necessitatem rei domesticæ, & miseriam domus, si quam passa esset.

Non negamus ortas subinde fuisse contentiones inter Franciscam, & Virum, & forsè istum fuisse illi mortem minatum, sed ob aliam causam, vt scilicet inceptos illicitos amores à genitoribus suggestos desereret, & honestè, vt par erat, vivueret, vt expressè legitur in eius depositione *Summar. nostro num. 2. litt. A.*

Hinc verificatur, quod ipsa Franciscā in epistola scripta Domino Abbatī Francischino ingenuè fatetur *Summario Fisci num. 4. & nostro num. 3.* quod scilicet eius genitores seminabant zizanias inter ipsos sponsos, & suadebant recursum ad Reuerendissimum Episcopum sub falso commento malorum tractamentorum, atque die, noctuque instigabant, vt virum, cognatum, & socrum veneno abigeret, domum combure-

ret, & quod horribilis est, capraret Amaſium , in cuius ſocietate Romam rediret, quemadmodum obedire in iſtorum pluribus non neglexit .

Et in alia Epiftola eidem Abbati ſcripta , arque per nos exhibita & data Summario n.4 ibi -- non hauendo hora chi mi fumenti al male .

Inanis eft reponſio, quod ſingula elementa dictarum primarum Epiftolarum fuerant prius deſignata per D. Guidonem , & deinde ſuperinducto per eam calamo efformata, ut ipſa aſcerit dicto Summario noſtro num.2. litt.K. Ad quorum comprobationem nil aliud deducere valuit, quam ſcribere neſcire, d.Summar. num.2. litt. B. H. & K.

Nam praterquamquod de mendacio apertissimè remanet conuicta ab eius fuſcriptione ab ipſa recognita in mandato procurarum in carceribus , vt in Proceſſu fugae fol. 39., & ab alia ſubſcriptione in capitulis matrimonialibus, de cuius veritate nefas eſt diſceptari, tum quia adeſt ſubſcriptio vniuersus ex Dominis Cardinalibus , tum etiam quia fuit recognitus pariter eius carather ab eadem ſubſribente per rogatum Notarii , vt in copia relictā in Proceſſu fol. 132., & in ſuper conuincitor ab Eccleſiaſtico , cum quo fugam arripuit, aſcerente non ſemel nocturno tempore recepiſce epiftolas proiectas ab ea è feneftra, aliasque miſſas per famulam , cuius depositionem damus in naſtro Summario num.5. litt. A.B.C.D. quod verificatur à Teste Fiftali fol. 108. ibi -- E tirò giù una carta , che benifimo la veddi, & il Signor Canonico la raccolse, e fe ne andò : prater epiftolas, & ſchedas repertas in carcere Caſtri No- ui , vbi ipſi reperiebantur, continentēs mutuum amorem ; Vnde impoſſibile redditur, quod illarum elementa parifomiter fuiffent ab eius viro deſignata, nec docetur à quo fuerint scriptarum , proinde præſumendum eſt fuifſe ab ipſa exaratas, ne patefaceret amores yetitos, qui occultari ſummo studio debuiffent : Et quæſo ſubijciatūr oculis prædicta epiftola , & bene agnoscetur , an ad imitationem signorum fuerint atramento efformata elementa à ſcribere neſciente, vel potius ab experta manu mulieris .

Primordium veritatis dictarum epiftolarum, de qua loquimur , deprehendimus ab eadem epiftola Praefidis Aretij, dicto noſtro Summario num 1., vbi habetur -- diſcandalo molto maggiore ſono state le fughe , e ricorſi fatti dalla Signora Sposa loro figlia à Mon-

*. Monsignor Vescovo, non con altro motivo se non, che nè essa, nè
li suoi Genitori voleuano dimorar più in Arezzo, mà tornarsene
à Roma, sgridata però da questo prudentissimo Prelato, la ri-
mandò sempre à casa in carrozza.*

Idque similiter expressè desumitur ab alia epistola Reuerendissimi Episcopi, quæ datur in *Summario num. 6.* ibi -- e tanto reclamaua, quanto era forzata à farlo per il fomento della madre. Et paucis interiectis ibi: bauemo qualche cognitione di ciò, perchè il Signor Senatore Marzi Medici, che presiede al Gouerno Laico di questa Città per il Serenissimo Gran Duca mi bauuea comunicato il tutto.

Verificatur vtterius per aliam epistolam D. Bartholomæi Albergotti exaduerso producta, quæ datur in *Summario Partis num. 2. in fine*, sed non integra; ibi enim habetur per Secretarium Reuerendissimi Episcopi fuisse exhortatos D. Guidonem, & eius matrem ibi: *An non brapazzare la Signora Sposa dell'affronto fatti, baua dopo tante bisiccie riconduisse la Signora Sposa à casa, & ella si è dichiarata di non volere stare assolutamente colla Signora Beatrice, né col Signor Canonico Girolamo suo Cognato, & post pauca: Io supplico V.S. IllustriSSima, e l' IllustriSSima Signora Violante à volerui porre rimedio, con insinuare alla Signora Sposa una pace tranquilla per quiete di tutti, vt in fol. 190. ter.*

Quod comprobatur ab epistola D. Abbatis exaduerso producta fol. 182. ibi: *Dal Signor Guido mio fratello gli sono state fatte diuerte offerte, non sono state accettate, e si pretende, che noi douiamo obligare la nostra Signora Madre, e Signor Canonico ad uscire di Casas; questo nonsarà mai vero, se pure non seguisse d'amore, e d'accordo; mà io non ce li consigliaro.*

Et ab epistola D. Romani 188. à ter. ibi: *Hò saputo per qual causa fuggì da Monsignore, & è questa che non vuol stare colli Signori Canonico, e Beatrice &c. quæ verba in dicto Summario Fisci num. 2. non adnotantur.*

Eccè igitur, quod Francisca non malè tractabatur, quamuis male tractari mereretur ob affectatum, & indecentem recursum sine causa ad Reuerendissimum Episcopum, prout patet an ex malis tractamentis prædicti Coniuges de Comparinis discesserint ab Aretio, & Francisca aufugerit.

Restat modò, vt videamus celsantibus malis tractamentis, quam nam causam Francisca habuerit aufugiendi à domo vi-

ri , siue potius , an scandalosa fuerit eius fuga , quod non erit
difficile agnoscere , si parumper immoremur in depositione
eiudem Franciscx , & in litteris repertis in dicto carcere
Castri Noui , quæ productæ per Fiscum in Procesu , licet
non fuerint recognitæ eius negligentia nobis officere nequit ,
nec ideò puto posse controverti esse eiudem caraðheris , si
conferantur cum caraðhere certo mandati procuræ , ultra
quod veluti continent amores , & nomen ipsius Guidonis ,
nemo prudens censebit non fuisse ab eisdem scriptas .

Ex eius enim depositione depromitur fuisse sèpius obiurgata
tam ob eius sterilitatem , & fuisse minis mortis perterritam
causa amorum cum dicto Ecclesiastico , ut dicto Summar . n . 2 .
litt . A . nec fallebatur cautus vir , dum in dies crescebat amor ,
imò coniugalis affectus diminutus erga virum , augebatur erga
Amasium : In dictis enim litteris , quæ dantur in Summario
num . 7 . Ille Ecclesiasticus vocabatur Amatus , Adoratus , Mir-
tillus , Anima mea , Amatissimus , Narcissus , Suspiratum bonum ,
Charissimum Idolum , & subscribebatur -- Fidelis Amans Ama-
rilli , & è conuerso ab Amasio vocabatur Adorata mia Signo-
ra , & in earum singulis exprimitur intensus amor , & amoris
ardor , quo vexabatur infelix pro Amasio , ut videre est , nec
sine pudore singulas expressiones amoris tenerimas refer-
rem , sed tantùm vnam , vel alteram non omitterem , ut ab un-
gue Leo dignoscatur , ut in epistola 17 . ibi : *siche voi non po-*
tete più dire , che io non vi voglia bene , perche tutto quello , che
voleuo al Signor Guido è volso à voi , che lo meritare . Et hæc
forsàn est causa cur renuebat iacere cum viro , ut annuit di-
cta epistola dicti D . Albergotti ibi : *La Signora Sposa quid s'ha*
malinconica , e due sere dopo la partenza di lor Signori fece s'bre-
pito grande , perche non voleua andare à dormire col Sig . Guido
suo Conforte , il che mi dispiace assai : fol . 190 .

In prima Epistola , ibi -- *Il mio affetto non b' più freno -- In*
quarta -- Io son pronta à far quello , che v'bò detto -- In deci-
ma -- Prenderò in piacere quelle pene , che vi son grata ; & longum
effet , & nimiam nauseam afferret singula recensere ; Malè enim ferebat castis moribus Aretij se conformare , af-
sueta liberiorem vitam traducere , ut legitur in Epistolis
Domini Abbatis Franceschini exaduerso productis fol . 179 .
tergo , ibi -- *Quelle occasioni , che siano state di amarezza tra*
V . S . & il Signor Guido io non le voglio esaminare , sò ben dire ,
che

che se è proceduto per volere indirizzare alle costumanze della Patria la Signora Sposa, questo può, e deve farlo il Marito, se perche sopra la Moglie gli dà l'autorità Dio, si come perche è pratico delle usanze, e tratti della Patria, che se V.S. & il Sig. Pietro ne lo impedissero farebbono male, & al Marito tocca auuertir la Moglie -- Et in alia sol. 124. ibi -- Ne mi posso persuadere, che li miei Madre, e fratelli si portino in forma tale, che obblighino à fare simili trascorsacci -- Et post pauca, ibi -- Et apprendere, che quello da i miei si andaua insinuando alla Signora Francesca al Sig. Pietro, & à V.S. non era se non per puro zelo del decoro della Casa, e loro.

Viceuera in litteris dicti Ecclesiastici idem desumitur, vt in Epist. 20. ibi -- Riceuo i suoi caratteri abundanti di quelle espressioni &c. si contenti riceuermi nel suo seno nel quale riposo tutti i miei affetti -- Et quæ pertinent ad fugam reddu ut clariorem Probationem mutuaæ vicissitudinis, vt potè verificata ab effetu sequuto, vt in Epistola 18. ibi -- vorrei sapere se Domenica à sera, cioè domani à sera potete partire, perche se non si parte domani à sera, Dio sà quando si partirà per la scarsezza de' Caleffi -- & paucis interpositis -- E leisubito che vede, che sono dormiti bene, mi aprirà, acciò gli possa dare aiuto à fare i fagotti, & à mettere assieme i danari -- Et post pauca -- Preghendo il Signor Iddio, che ci facci riuscir bene questo nostro disegno.

Et Epistola 19. eiusdem Amasij, qua dantur Amatæ documenta non obscure etiam nos edocet cuius qualitatis essent Amores, ibi -- Che il geloso si mustri rappacificato, e che habbi detto, che stiate alla finestra, è un cattivissimo segno, perche in questo modo vorrà scoprire cosa fate alla finestra, & à che fine ci state; Mi bâ detto il &c. Che hora è più geloso di prima, e che se viene in chiaro di nulla, si vuol vendicare con darci la morte, e che vuol procurare di fare il simile à me.

Comprobatur vltérius, quod iste miser Inquisitus deplorabiliter exclamat non uno tantum Amasio Arétijs fuisse contentam, sed à pluribus Procis coinquinatam, vt vituperia eius Domus multiplicaret sol. 98. tergo, Dum non obscurè legitur in septima Epistola, ibi -- Mi incontrai con il Signor Dottore, come al solito, mi disse dove andavo, e per la strada mi disse perche gl'haueuo scritto dispettosa, Io gli dissi, che meritava peggio, perche facea fatti cattivi, e buone parole, perche diceua di volermi bene, e poi lo vuole alla Souara, & altre, & in 13. ibi --

eirea il Dottore lei m'offende con dirmi, che io tornerò ad amar lui, vi dico, che se nascesse al mondo un Sole, non bò cuore per altra piaga.

Pater igitur an honestam Causam Franciscā habuerit diuertentendi à Domo Viri siue potius concitata fuerit à vehementibus amoris calcaribus; dicatur modò, quod ad bonum finem huiusmodi litteræ missæ fuerunt, vt alliceretur Ecclesiasticus ad eam associandam, vt evitaret mortis discrimen, in quo ex iniusta causa reperiebatur, & quod potuerit in Societate Amasij tutum seruare pudorem, dum pro certo amorosæ expressiones factæ in dd. Epistolis non præferunt castitate n. Animi, & pudicum affectum, & sanè deficiente causa iusta fugiendi, corruit velamen, quo salacitas obumbrati prætentebatur. Fateor Iuditham castissimam Viduam decora facie, & vndique ornatam perrexisse ad hostem salacissimum, sed ad explendū pium opus ad liberandam scilicet Patriam non præmissis lasciuis litteris, sed orationibus feruentibus munitam, de cuius illibata pudicitia nefas fuit suspicari, cum imò afflato Spiritus Sancti impulsa extiterit; Hodiè verò per quam paucæ inueniuntur Iudithæ, sed multiplicantur filii Loth, quæ si custodire proprium pudorem in commensalitate patris non valuerunt, imò ne sobrius negaret, quod impotenter efflagitabant, inebriarunt eum vino, vt alienatus ab eius mente inuoluntariè nefario incæstu pollueretur *Genef. cap. 29.* Credimus ne quod Puella, quæ Amore desperabat, quæ ardentissimè flagrabat societatem Cupidi Amantis, & Amati saluam habuerit honestatem in longa fuga? quam utinam in Domo Viri seruasset!

Et sanè si iustum mætum ex iniusta Causa sibi illatum habuisset, non utique ad augendum suspicionem prauæ, & libidinosæ conuersationis in fuga dictunt Ecclesiasticum assumpsisset Comitem, qui eius Viro suspectus erat, & qui nullo gradu consanguinitatis, seu affinitatis sibi, vel marito erat coniunctus, vt vterquæ fatetur in nostro Summario num. 2. litt. G. & num. 5. litt. E. & sic, vt autenticaret in honestatem, sed seruato Matronali decore, vel mediante opera Reuerendissimi Præfulis aliquod Monasterium fuisset ingressa, si veritate, non mendacijs sua fuisset, vel habito recursu ad Præsidem laicum, iste cunctis exploratis, aut turum redditum ad Vrbem honestis Viris, ac Mulieribus comitantibus præbuisset, vel penè honestam Matronam cum debitæ cau-

tio-

tionibus collocasset; aut quoties, de neutro confidisset, & statuisset ex se Romam reuerti saltē cum uno ex Attinentibus iter fuisse aggressa.

Prout labitur alia excusatio ad cohonestandum illicitum Amorem, quod de prædictis conscius erat alter Ecclesiasticus leuit Cognatæ dictæ Franciscæ, dum si benè percurrantur supradictæ Epistolæ summoperè augebitur suspicio illicitæ correspondentiæ cum illius complicitate, vt in Epistola 11. ibi -- *lei mi dice che il Fr. non vuol portarci più lettere, vi fò sapere, che Io li fò due vezzi, e mi abbastanza l'animo, che ve le porti, perche Io gli dico due buone parole, e lui s'incanta, e farà quello, che Io vorrò* -- Et in Epistola 19. Amasij, ibi -- *Perche mi hò detto il Fr. Che hora è più geloso di prima, e che se viene in chiaro di nulla si vuol vendicare* -- An autem ex dictis verbis possimus desumere, quod casti essent amores inter ipsos, quia de prædictis erat Conscius Alter Ecclesiasticus, quisque iudiceret. Scio tamen, quod ad sibilum Amasij in societate d. Alterius Ecclesiastici se exponere Franciscam in fenestrâ non benè olebat, vt deponit in Processu fugæ Testis Fiscalis 107. tergo 108. proinde non sine Causa Dominus Guido suspicabatur etiam de dicto secundo Ecclesiastico, ut ipsa Franciska asseruit in sua depositione dicto Summ. nostro num. 2. antè litt. A.

His præhabitatis, hoc est non constito, quod Franciska sine iusta, & legitima causa fuisse perculta minis mortis, immo constito de suspectissima correspondentia cum Amasio, consequens erit, quod minæ proferebantur à Viro, vt honor eius seruaretur, & sic erat in potestate eiusdem Franciscæ se eximere à prædictis minis sine scandalo sine fuga, sine opprobrio, sed castè vivendo, sed ipsa nimis proclivis tintillo carnis omnia postposuerat, vt libidinem exploreret, nullo habito respectu ad violandum fædus coniugale, de cuius temeratione nimis incongruum est dubitare, cū manifestè liqueat ex deductis in Processu, & signanter ex reciproco Amore inter Amasios, vt aduertit Rota dec. 95. n. 6. par. 2. diuersor., & ex litteris tam terrimas expressiones continentibus, Antaran. in cap. Preterea num. 3. & ibi Felin. num. 3. de Testibus, Paris. consl. 54. num. 64. lib. 4. Ryminald. Iun. consl. 274. num. 9. lib. 3. Mafscard. de probat. conclus. 64. num. 10. in fine.

Iungressus, vel egressus d. Ecclesiastici è Domo Franciscæ tempore
A 5

pore suspecto, de quo deponit Testis Fiscalis 107. tergo, ibi --
Nel suono dell' Ave Maria essendo nella medema sinistra viddi
oprire l'uscio pian piano di detti Signori Franceschini, dal quale
usci detto Signore &c. e succbiuse nel escire detto uscio, mà non
lo chiuse affatto, e di là a poco detta Signora Francesca Pompilia
con il lume in mano vidi, che chiuse detto uscio -- & comproba-
tur ab Epistola 11. ibi -- E per questo Io non vi faccio venire,
che hora non s'apre l'uscio di strada, mà potrete aprire quello
della Rimezza &c. de per se est validus probare Adulterium
quoties etiam ageretur ad irrogandam poenam, Polidor. Rip.
de noctur. tempor. cap. 36. num. 14., Farinac. quest. 136.
num. 122.

Proiectio eiusdem ad fenestram ad sibilum diù, noctuque, &
nutus mutui, de quibus deponit d. Testis 108. sunt valde ef-
ficaces ad probandam copulam carnalem, Ancaran. in dicto
cap. Præterea num. 3. & ibi Butr. num. 9. ad finem, Felin. post
num. 13. de Testibus.

Modus quoad fugam se præpararunt continens, vt ita dicamus,
speciem Insidiarum, vt defumitur ex Epistola Ecclesiastici 18.
ibi -- Sopra il tutto cerchi di mettere in tutti i Bucali, e lei non-
ne beua -- qui querendo opportunitatem miscendi somnife-
ra perscrutabatur cuius coloris vinum in Domo bibetur,
ne vt authumo, alteratus illius color medicamine admixto
insidias proderet, vt in Epistola 4. ibi - Poi incircase sì segui-
ta à bere il vino rosso vi dico di sì -- In 12. -- Mentre lei dice,
che non si può far dormire mia Madre, mentre stà male, e non
beue vino -- Et in Epistola 13. -- In quanto a quello, che vuol
sapere del vino vi dico, che è rosso per hora, mà più in qua non-
sò come sarà, mà ve lo farò sapere.

Accedit quod dicta milerrima afficiebatur Zelothypia dicti Ee-
clesiastici, vt notatur in Epistolis 5. & 21. quæ non solet concipi, nisi ab Amantibus: Quo circa cum sit innegabilis amor
carnalis inter ipsos reciprocus, non puto posse dubitari, quin
discessus simultaneus à Domo Viri, & associatio per longum
tramitem probent Adulterium, Farinace. dicta quest. 136.
num. 182. & est Textus in leg. consensu S. Vir quoque Cod. de
repudijs, ibi -- Aut ipso inuitofine iusta; & probabili causa soris
scilicet pernoctantem.

In progressu itineris oscula ad inuicem impieta, de quibus de-
ponit Testis Fiscalis, quem ea vidisse de nocte in Processu
non

non reperio, ut exaduerso supponitur, sed fol. 100. afferit, ibi -- Solo viddi, che alle volte si bacianano, & qnæ tam anxie impingere Francisca desiderabat, eademq[ue] recipere, ut in Epistola 11. ibi -- *La ringratio dellibaci, che mi inuiate, ma se me li dassisso da voi l'hauerei cari, & io ve ne dò altre tanti millioni* -- Et in Epistola 10. ibi -- *E dandoui un'amaroso bacio* -- Et in 5. -- *Lasciauo di mandarui un millione di baci* -- & passim in alijs, reddit Adulterium non ambiguum, adeo ut non desint afferentes, quod probato osculo, dicatur probatum Adulterium, Clar. S. Adulterium num. 16. Laurent. Tenuin. in pract. cauthel. 6. num. 153.

Quo circa nemo, ni fallor, tam vecors, & tam insipida mentis inueniri poterit, qui sciens, quæ recensuimus non firmiter credat, quod cum reperiuntur in Cauponis in itinere, sive nocte ad quiescendum, sive mane ad se refocillandos pudor Matronalis non fuerit temeratus.

Sed profectò omnes prorsus tolluntur Ambages, dum omisso, quod ille Ecclesiasticus vestibus laycalibus induitus esset 4. 100. quod non leue momentum afferit ad probationem Adulterij Matthæu. de re crim. controv. 11. num. 31. peruererunt insimul ad Cauponam Castris noui sub hora prima noctis cum dimidio, ut tres Testes Fiscales concorditer deponunt 44. tergo 47. 49. Et licet in Mansione duo lecta adessent, vnum tamen dumtaxat dictus Ecclesiasticus voluit apartari, & tota nocte clausis foribus solus cum sola quieuit (si quiefcere possunt Amantes,) ex quo absque dubio probarum remanet Adulterium cap. litteris de presumptionibus, Menoch. consil. 31. num. 25. vers. nec vera est, Hætor. Æmil. de Testib. verb. Testis Adulterium num. 33. Farinace. dicta quart. 136. num. 170. & alijs passim ultra relatios in alia.

Qualis quippè probatio efficacior euadit à Mendacio Francisce afferentis peruenisse ad dictum Hospitium in Aurora, dicto Summar. num. 2. litt. F. & L. Si enim malo fuisse per actum, non vtique veritatem occultare tentasset, ut bene in proprio Riminal. Lun d. consil. 274. num. 64. ad 67.

Demum sententia, seu Decretum Tribunalis, quod datur in Summario num. 8. vbi condemnatur dictus Ecclesiasticus pro cognitione carnali Franciscæ, remouet omne dubium, quia Adulterium reddit notorium, ut in alia probatum fuit. Et licet afferatur fuisse in mente Dominorum iudicium illud

moderare , & addere — pro pretensa cognitione carnali -- non tamen fuit moderatum , & nihilominus nihil obesset , postquam ad aures infelicitis mariti fuerat peruentum Adulterium vxoris manifestum , & notorium canonizatum scilicet per Iudicis decretum .

Præsertim quia , & si ab eo præscinderemus , adhuc ad effectum , de quo agitur , copula carnalis plusquam sufficienter probata remaneret , quia non agitur de inferenda pena Adulteriæ , sed Adulterium excipiendo deducimus , ut aducrit *Mattheu* . in præcisus terminis dicta controv. 11 . num. 25 . & in fortioribus *Spad. conf.* 83 . in princip. lib. 1 . Est enim regulare , quod Adulterium præsumptionibus exhuberanter probetur ad effectum Ciuilem , ad separationem scilicet Thori , vel ad ammissionem Dotis , *Hofstien* . in cap. litteris post numerum 4 . verb. *Divortij* , & ibi *Butrius* num. 6 . de *præsumpt.* *Soccin* . *Iun. conf.* 32 . num. 9 . in fine lib. 2 . *Ferrett. conf.* 168 . num. 4 . *Bertazzoli. conf.* crim. 20 . num. 8 .

Nec releuat , quod aliquæ ex dictis vehementibus præsumptionibus probentur per Testes singulares , quia agimus de probanda Inhonestate , & Adulterio in genere , nec ad effectum condemnandi Adulteram , sed ad defensam Inquisiti , ut sentit in puncto scribens apud *Sanfelic.* *decis.* 337 . num. 16 . & 19 . & ante eum *Clar. S. final. qnaest.* 53 . num. 19 . *Farinacc. queſt.* 64 . num. 22 . 3 .

Et ratio est evidentissima , quia ut excusetur maritus ab homicidio vxoris adulteræ ex interuallo , non requiritur exacta adulterij probatio , sed superabundat vehemens adulterij suspicio , ut decimum testatur *Sanfelic.* *dicta decis.* 337 . num. 13 . Nos autem versamur in fortioribus , quia nedium habemus vehementes suspiciones deductas per Testes singulares , sed alias etiam exquisitè probatas , imò apertissimas probationes per Fiscum deductas .

Parum obstante , quod Francisca prope mortem se exculpans , & Amasium , afferuerit nil mali intercessisse inter ipsos , quia huiusmodi exculpatio nimis affectata suffragaretur , quoties antecedenter socium inculpatisset , & nullo alio indicio eius inculpatio suffulta esset , & haec iuuaret socium non ipsam . At postquam de matrimoniali fide fracta ex supradictis probationibus conuicta remaneret , absurdum esset , quod exculpatio

tio facta, vt honesta mori videretur tantæ esset efficaciam, vt probationes suæ turpitudinis abolere posset *Marfil. in pract.*
S. restat num. 12. & 16. in fine Burfatt. conf. 201. num. 14. Regin. iun. conf. 410, num. 17. Farinacc. quæst. 46. num. 72., & quod horribilis est, vt ex dicta excusatione occisor gravius puniretur.

Credo. & sperare iuuat eius animam in loco sempiternæ salutis esse positam, mediante Diuino auxilio, dum tempus habuit detestari anteactum vitam, sed nullus cordatus homo laudare poterit eius Testamentarium dispositionem, in qua eius filium vix natum, & ideò innocentem Patri occultatum solum, vt audio in legitima, & extraneum nullo nexus affinitatis, seu consanguinitatis coniunctum in reliqua hæreditate instituit.

Ex his igitur patet adulterium Franciscæ esse plenissimè probatum, & proinde iuxta etiam sensum Fisci eiusdem homicidium, & si ex interuallo patratum non est expiable poena ultimi supplicij, nedum ex iusto dolore concepto, sed etiam quia honoris læsio semper viget iuxta illud *Virgilij Aeneid. lib. primo.*

Eternum seruans sub pectore vulnus.

In nihilo refragante, quod non occiderit vxorem, & adulterum, quos assequutus fuerat in Caupona Castris noui, immò curaverit eorum carcerationem, quasi quod post recursum ad Iudicem non potuisse de facto luum honorem vlcisci.

Quoniam toto Cælo negamus potuisse aliquem illorum interficere, quia vel citato itinere fessus, vel agitatione mentis ita perturbatus, vt febri corripereatur, & ultra quod præsenserat dictum Ecclesiastinum armis sulphureis esse præmunitum, vt in Processu fugæ ipse asseruit, tempore scilicet non suspecto, quia non adhuc commissa fuerant homicidia 76. 77. Erat int super dictus Ecclesiasticus terribilis, vt ex Teste Fiscali fol. 167. & ipsa Franciscæ fatetur *Summ. nostro num. 2. litt. C.* alias inquisitus pro exoneratione Archibusiatæ in Birruarios, vt ipse asserit 71. Et insuper nimis promptus, & dispositus ad resistendum, vt in Epistol. 18. vbi loquens de somnifero propinando domesticis addit ibi — *E se per cattiva disgratia la scoprissero, e la minacciassero di morte, aprapure la porta, che ò morirò con voi, ò vi liberarò dalle loro mani — Vxor verò in*

cc-

terrea, minax, irata, & furibunda, ut effectus demonstrauit, dum redacto in posse Curia Ecclesiastico coram Birruarijs, & Testibus ausa fuit ense denudato irruere contra virum, quem de facili occidisset, nisi fuisset impedita sol. 50. ipsa verò inualidus, & viribus impar non poterat vtrumque, vel istorum alterum occidendo vindictam sumere ense viatatio solummodo instructus, curauit eius carcerationem in illa confusione animi, ut non potens occidere euitaret continuationem turpitudinis, & hac via impediret futura adulteria, immò, quoties occidere potuisset, & non occidisset esset laudandus; quia non adhuc per sententiam Iudicis notorium factum erat adulterium, de quo solummodo vrgebant suspicções.

Quo verò ad recursum ad Iudicem, quando affirmari posset renunciasse facultati occidendi vxorem adulteram, quod negamus, supplico aduerti, quod prudenter se gessit Tribunal collocando Franciscam in Monasterio, ut decentius, quam in carcere conuersaretur, & deinde visa attestacione Medici de eius infirmitate, ne ibi destituta necessarijs auxilijs moretur, & sic subiret in procedendo poenam, à qua vbique locorum receditur, permettere attento consensu Domini Abbatis Franceschini frattis D. Inquisiti, ut penè Genitores deponeretur cum cautione de habendo Domum pro Carcere.

Sed laudare non possum cuiusquis fuerit, qui curauit euellere, Franciscam à Monasteno falso commento infirmitatis, dum decentius, & magis legitimè poterat consequi intentum veritate patefacta, nempe ob prægantiam, & vrgentem uterum, sed id factum fuisse non ob aliam causam, nisi aut ut Domino Guidoni filius occultaretur, dum lex præsumit filium fuisse genitum à legitimo Patre, quamuis vxor se præbuisset incontinentem; aut credens Franciscam ex alio concepisse, quam ex viro pro posse palliauit eius grauidantiam.

Placeat interim Illustrissimo D. meo paulò vergere oculos Arearium, & parumper considerare D. Guidonem infamia notatum, dum ad eius aures peruenit decretum condemnationis adulteri, adultera usque illuc sine poena, nescius ob infirmitatem suppositam non potuisse puniri, & in Puerperio sibi de industria occultato inespacem else poenæ, videns insuper

Fran-

Franciscam reuersam in suspe & iissimam domum Petri, & Violantis, qui instillarunt in honestatem Franciscæ, qui cam repudiarunt, & filiam mætriticis esse professi sunt, perdidit omnem patientiam, ut liquet ex dispositione Blasij fol. 318.
tergo ibi -- Må di più l'haeuua ripigliata in casa, dopo che gli si era fuggita, benche lui l'haeuesse messa nel Monastero, quæ conuersa in desperationem coegit infelicem virum ad tandem honestum esse, nec ideo recursus ad Iudicem deber illi poenam augere, ut in punto Ruin. conf. 2. num. 7. verf. si Maritus occiderit uxorem lib. 5.

Non negamus D. Abbatem Franceschinum dedisse consensum reductioni Franciscæ ad domum Petri, & Violantis, ut Religioni Domini mei Fisci Aduocati acquiescam, sed ad summum oretenus, quia in scriptis illum videre non potui; Verum in nostro proposito non afficit D. Guidonem, cum non liqueat fuisse certioratum de tali consensu, & quatenus Fiscus præsummat fuisse edoctum ab Abate Franceschino eius fratre de dicto consensu, coacti etimus affirmare, vel scientiam non præsumi, ut infra ostendetur, vel ad omne peius adesse scientiam præsumptam, & non puto, quod ex huiusmodi præsumpta scientia possit irrogari poena mortis, & D. Guido condemnari, cum non sit de dicta scientia confessus, vel convictus cap. nos in quemquam 2. quest. 1. ibi -- Nos in quemquam sententiam ferre non possumus nisi aut convictum, aut sponte confessum.

Imò si D. Guido fasus esset sciuisse consensum præstitum à D. Abbate eius fratre, cum tamen istæ non haberet mandatum speciale, nec generale ad lites, sed tantummodo ad recipendas pecunias libi ablatas à Franciscæ, ut videre est fol. 136. Excedendo limites suæ facultatis exasperasset ipsius animum necnon Franciscæ, Petri, & Violantis temeritate itz excludisset infelix Vir, ut raperetur ferè dixerim coactè ad vindictam sumendam, quam distulit quousque spem habuit dirimere matrimonium per errorem personæ contractum de Apicibus Iuris Canonici ignarus, quod scilicet error qualitatis personæ non reddit nullum matrimonium, sed error individuali Tancred. de matrim. lib. 7. dispas. 18. num. 8.

Nec refert, quod Franciscæ tempore, quo occisa fuit, esset sub fideiustione de habendo domum pro Carcere, quasi quod existisset sub Principis custodia, quoniam quidquid sit si in-
Prin-

Principis odium inquisitus Franciscam occidisset , dum ta-
men suum honorem recuperare voluit , & maculam sive exili-
mationi inustam detergere illius sanguine , & sic ex causa
particulari , prædicta asserta custodia non attenditur , nec de-
lictum agrauat vt in fortiori casu de offendente habentem
saluum conductum à Principe distinguendo firmat Farinacc.
queſt. 29. num. 18. & ante eum Mascard. de probat. concl. 162.
num. 18. & 19. vbi quod scientia non presumitur .

Præter quam quod quando loquitur de custodia intelligere
debemus de publica , non de domo priuata , vt in alia proba-
ut , nec satisfacit responsio , qnod procederet in ipso custodi-
to , non autem de custodiam Violante , quoniam nescio repe-
rire probabile discrimen inter utrumque , cum uterque agat
de effagienda poena , nec maior ratio considerari potest in-
vno , quam in alio , immo maiori excusatione dignus est tertius ,
qui huiusmodi custodias frangit , non probata scientia , quod
offensus sub tali custodia existaret , quemadmodum excusa-
uit occidens Bannitus ignorans Rebannitionem Mascard. de
probat. d. concl. 162. num. 27. Farinacc. queſt. 103. n. 123.

Si ultima poena non sit puniendus D. Guido ob Vxoricidium ,
eadem ratione puniri non poterit ob homicidia Petri , & Vio-
lantis . quia eadem causa honoris commissa fuerunt , tum quia
ad illorum instigationem Franciscus reperiit Amasij , tum
quia ut magis D. Guido vituperaretur non erubuerunt decla-
re Franciscam ex illico coitu genitam fuisse in lucem
æditam per meretricem , quod multum deturpat honorem
totius Domus , vt obseruat Gratian. discept. 863. num. 4.
5. & 6. cuius filiae solent matrem imitari , tum etiam
quia , vt supra dixi , Inquisitus exarsit , habita notitia de
regressu Franciscæ ad eorum domum 318. tergo , & sequen.
& comprobat Alexander in sua confessione 646. ibi -- che si
doueuia ammazzare la Moglie , Socera , e Socero , perche detti So-
cero , e Socera teneuano mano al malfare alla figlia , e gli face-
uano i Ruffiani -- Quod magis claruit in fatali sero , quo oc-
erubuerunt , nam pulsata lanua , & statim ac Violantes audiuit
charissimum nome Amasij , illieò illam aperuit , & patefe-
cit , quod ni fallor remouet dubium , quod Petrus , & Violan-
tes non egreferredent amores filiae , & Amasij .

Hoc vnum est , quod aut compellimus faceri dictos Coniuges de
Comparinis dedisse nouam causam læsiuam honoris reci-
pien-

piendo eam domi postquam declarauerant non esse eorum filiam, & de adulterio illius manifestè constabat, & proinde recedendum esse à pena ordinaria, ut benè Bertazzol. conf. 434. num. 15. vers. verum sumus. Quamvis iustus dolor conceptus semper cor præmat, & ad vindictam stimulet, vt præter in alia relatios Ioseph Mele in addit. ad Guzzarell. dec. 18. num. 5.

Aut adhuc durasse, imò auctam fuisse causam iusti doloris, quæ satis est ad asserendum homicidia dici incontinenti patrata, ut egregie in terminis Ruin. d. conf. 2. num. 7. post med. vers. durante igitur tom. 5. Handed. conf. 104. num. 30. vol. 1. Bertazzol. d. conf. 434. num. 15. vers. Præterea, Ioseph Mele in addit. ad Gizzarell. d. dec. 18. nu. 5. & seq. de Ponte de potest. Proreg. tit. 2. § 3. num. 32.

Cumque tum ex confessione Guidonis, tum ex confessione sociorum, tum denique tx tot probationibus in Procesu redactis constet D. Guidonem motum fuisse ad illos occidendos ex causa honoris, frustrà Fiscus prætendit ex alia causa extra-nea delicta commississe, nam vt verum fatear nullam aliam causam reperio, quæ honorem non tangat, & vulneret; si contempleremur, quas D. Guido recenset in Procesu fol. 96. 97. Quod scilicet prædicti Coniuges de Comparinis curassent fugam Franciscæ, quodque insidiati fuissent eius vitæ, quod vnum sufficeret ad euadendam poenam ordinariam. Bertazzol. conf. 433. & 434. Grammat. dec. 5. per tot. vbi testantur fuisse mitius punitum, qui occidi mandauit minantem licet non plenè constaret de minis, vt patet nu. 16. vers. & si dicatur sequitur T. Non. conf. 109. nu. 6. & sunt Textus clari in l. prima C. quando licet unicus ibi -- Et mortem --, quam minabatur excipiat, & id quod intendebat incurrat, & in l. sicut allegas C. ad leg. Cornel. de Sycar. ibi -- Dubium non est eum, qui inferenda necis voluntate præcesserat iure casum videri.

Altera causa deducta per Fiscum consistit in lite mota super annulatione promissionis Dotis; Super qua exaduerso adhibita fuit omnis solertissima indago, & propterquam prætendit in penas Constitutionis Alexandrinae, & Bannimentorum incidisse, sed profectò labitur pretensiō, nām si bene introspiciamus, finē difficultate reperiemus huiusmodi Causam non

non esse minùs offensiuam Honoris, nam causa ob quam Petrus se eximere tentauerat ab obligatione præstandi Dotem promissam illa vnicâ fuit, quod scilicet Francisa non esset eius filia, sed incerti Patris, & Meretricis, an autem huiusmodi declaratio vulneret existimationem Nobilis Viti, omnis Homo agnosceret.

Vtrumque sit huiusmodi prætensio locum sibi forsitan vindicare poterat antequam ut supra dixi haberentur confessiones Domini Guidonis, & Sociorum, tunc enim Fiscus poterat esse ambiguus ex qua Causa semouere potuerit ad occidendum; At postquam liquet ex omnium confessionibus causam Honoris dedisse impulsum, & compulisse ad occidendum, ut Dominus Guido asscrit fol. 678. ter. ibi -- *E dare alli medesimi delle ferite in riguardo, che li medesimi mi haueuano tolto l'Honore, che è il principale* -- Frustrè queritur an ob aliam Causam illos occiderit, quo circa cum de causa Honoris liqueat Fiscus nunquam poterit probare illos fuisse occisos ex causa litis, & non Honoris, vt perneceesse requiritur ad incursum Bullæ predictæ, ut in punto *Mando. conf. 61. n. 1. ad 3. Rota coram Puteo decisi. 97. & 98. lib. 1.*

Quæ etiam aptantur respectu Homicidij Franciscæ, quæ intentauit Iudicium Diuortij, nam si ob aliam Causam prætendisset separari, nec liqueret de sua Inhonestate, tunc utique factus esset locus Alexandrinæ; At cum Iesus Honor causam dederit Homicidio longe versamur extra terminos Alexandrinæ, alias adiuentus esset pulcherrimus modus, ut impunè Vxores prostiteretur, nam si post Adulteria admissa instituerent Iudicium super separatione Thori reperirent tutum confugium ad evitandas Mariti iustè iratas manus, & tute redherentur Clypeo dictæ Bullæ, quamvis non obtentatum diuortium, sed ob earum Inhonestatem offenderentur.

Qualis pena ultimi Supplicij eo minus ingeri poterit contra D. Guidonem sub pretextu, quod contra formam Apostolicalrum Constitutionum, & Bannimenrorum Homines Armatos congregaverit, nam quando etiam controuerteretur; An licet Viro congregare Homines ad occidendum Vxorem Adulteram, adhuc essemus extrà terminos Constitutionum, quæ locum habent, quando Homines congregantur ad indeterminatum malum, & malum sequutum non est, tunc enim aptantur

tur dispositiones Bullares , at quoties vniuntur Homines ad patranda delicta, tunc eis sequutis attenditur finis, ad quem Homines congregati fuerant , & illius poena indicitur , nec amplius queritur de principio, hoc est de conuenticula, vt in alia probauit. & addo aliud Votum Orani penes Decisi. post. 2. vol. confil. Farinace. vot. 61. num. 20. & ibi Adden. litt. A. in fine , vbi post disputaram questionem afferit ibi-- Sed certe premissis non obstantibus inoccurrenti casu non credo recedendum à resolutione tantorum virorum , quos credendum est omnia cum maturitate, & prudentia considerasse, & rescriptisse S.D.N. Clementi VIII. -- Et in fine additionis testatur ita fuisse iudicatum in Camera Apostolica de ordine dicti Summi Pontificis , Bartol. in l. nunquam plura num. 10. ff. de Priuat. delict.

Quod etiam remanet comprobatum à Bannimentis Illustrissimi Domini mei cap. 82. vbi imponunt penam prò coadunatione Hominum ad malum finem , si ille prauus finis sequutus non sit, & nihil determinant vbi delictum , prò quo Homines erant coaceruati sit consumatum, quia hoc casu poena conuenticula cessant, sed ingeritur solummodo pena patrati delicti, vt supra dictum est .

Et quod congregatio Hominum ad effectum recuperandi dignitatem non cadat sub poenis Constitutionum Apostolica- rum penes Farinace. conf. 65. num. 66.

Remanet tandem Armorum probitorum delatio , quam & si nonnulli Doctores afferuerint non esse confundendam cum delicto principali , contraria tamen Sententia crebriori Doctorum calculo recepta est, quia attenditur finis , quem principaliter Delinquens in mente habuit , vt in nostris precipisis terminis Bartol. in l. nunquam plura num. 7. & ibi Adden. litt. C. ff. de priuat. delict. , & ibi Angel. num. 8. cum adden. litt. B. post medium, Bald. in l. Aduersus num. 7. C. de fur- tis , Andr. Barbat. de Cardinal legat. 5. quæst. num. 26. , Mar- sil. in l. si in Rixa num. 5. ff. ad leg. Cornel. de Sycar. , & in l. unica num. 54. Cod. de rapt. Virgin. , & in Prax. crim. S. Pro complimento num. 38. & post quamplurimos Iodoc. in Pract. crim. cap. 77. num. 4. Andr. de Ifern. in Constit. si quis aliquem de Percuss. illicit. cum Armis in fin. principy vers. sed prima opinio videtur verior, Viu. comm. opin. verb. Statutum puniens,

Ber-

*Bertazzol. conf. criminal. 520. num. 1. Cephal. conf. 204. n. 42.
& seq. lib. 2. Farinacc. quæst. 22. num. 20. Et in puncto, quod
occidens ex causa Honoris cum Armis prohibitis mitius
adhuc puniatur iudicatum testatur Matthæu. de Re crim. di-
cta controv. 11. num. 46. & 47.*

*Quod etiam procedit in fortiori casu plurium Delictorum, quæ
possunt patrari commodè separatim, & tendunt ad finem
diuersum, nihilominus si eodem tempore, & ad eundem finem
committantur, vna tantum pena principalis delicti in-
mente habiti imponitur, vt volens committere furtum si
transcedat muros Ciuitatis, quamvis illud potuisse com-
mittere absque delicto transgressionis, quod est grauissimum
Farinacc. quæst. 20. num. 146. adhuc vnicarum tantum penarum sci-
licet furti punitur veluti principaliter habiti in mente paulò
acerbiori pro transgressione murorum Ciuitatis, non tamen
grauiissima Ioseph. Ludovic. decis. Lucens. 61. num. 3. vers. si
verarent par. 1. Farinac. quæst. 22. num. 25.*

*Non me latet, quod Bannimenta Illustrissimi Domini mei cap. 8.
videantur dirimere quæstionem disponendo, quod poena
delationis Armorum confundi non debeat cum poena delicti
cum eis commissi, sed ultra, quod Bannimenta non com-
prehendunt aliquem ex Socijs viri forenses, & non de distri-
ctu, cum tamen passiuam interpretationem recipiant à Iure
communi, quoties Arma deferantur non ad malum finem, &
deinde aliquid delictum committatur cum eis, quia Delin-
quens non habuit in mente delictum, quod patravit, tunc de
viroque punitur, quia diuerso tempore diuersa crimina com-
misit, at quando quis animo occidendi arma prohibita de-
ferat, & exinde occidat, tunc attenditur principale delictum
Homicidij, cuius contemplatione Arma gestauit, & Homi-
cidij poena imponitur, non autem delationis Armorum, vt in
puncto sic distinguendo comprobat Io: de Plat. in S. Item lex
Iulia il 2. in fine vers. sed quero An si aliquis Instit. de publice
Iudic.*

*Supplico aduerti, quod Facinus, de quo agitur, redditur con-
siderabile, quia tres nil mali timentes, sed vndeque timere debentes ceciderunt, non ob genus Armorum, quibus
caesi sunt, & sic eorum numerus non Instrumentum mortis
excitauit admirationem, & idem pro certo fuisset si longis-
simis*

simis ensibus , vel Baculis , vel Saxis occubuissent , quo circa durissimum esset , quod Fiscus excandescat Homicidijs , & pro illis non potens exigere pœnam mortis , exigit eam pro delatione Armorum .

Pxterea D. Guido negat expressè adhibuisse , derulisse , aut retinuisse arma reprobatae mensurae , & licet à quatuor eius Socijs asseratur tempore Homicidiorum habuisse præmanibus breuem cultrum , & simile armorum Genus dedisse Socijs , non tamen isti possunt illum conuincere ad poenam ordinariam , vt benè disputata materia , & confutatis contrarijs firmant Farin. quæst. 43. num. 76. iuncto num. 69. & seq. Guazzin. defens. 32. cap. 8. num. 5. verific. Quæ opiniones per tot. Angel. de crufess. lib. 3. quæst. 19. num. 14.

Non negat penes se habuisse Terzarolum vndique honustum , sed illum in occidendo non adhibuit nec ad occidendum gestabat , sed solummodo ad se defendendum , quoties in domo prædicta inuenisset extraneos paratos ad vim inferendā , idquæ sibi permissum fuit stante ampla facultate deferendi huiusmodi genus Armorum per Sratum Ecclesiasticum , & addere audacter possem etiam in Vrbe , quia de Vrbe ibi nulla sit mentio , quamuis excipientur nonnulla loca ex verissimo axiomate , quod exceptio firmat regulam in non exceptis , Alex. conf. 64. num. 2. lib. 4. Surd. conf. 430. nu. 7. lib. 3. Gratiā. discept. forens. cap. 922. num. 31.

Idque facilius sibi licere , credere poterat , quia in Vrbē extabant eius Inimici , & hic minabantur , ac insidias struebant , vt ipse D. Guido dicit , & ideò magis erat necessaria hic delatio similium armorum , quam alibi .

Nec releuat , quod ex quo appensatè prætenditur occidisse ei suffragari non deberet licentia deferendi Arma , nam ultra quod ex supra deductis , & in alia homicidia prædicta stante causa honoris nequeunt dici ex interuallo patrata ; Obiectū procederet quoties vsus fuisset dictis Armis ad occidendum , sed ijs non adhibitis non videtur posse dici non suffragari facultatem . In omnem casum quamvis de summo rigore loquendo posset dici armatus dd. armis occidisse , non tamen pena rigorola mortis esset puniendus Caball. resol. crimin. cas. 90. num. 7. ibi -- Nunquam tamen vidi de facto in his casibus d. condemnationem vita exequi , sed ex gratia in mitiorem commutari .

Dc-

Demum nec ex quo astitit homicidijs commissis per Socios cum Armis prohibitis potest dici incidisse in poenam prohibitionis, quia huiusmodi pena, qua locum habet in adhibente dd. Arma, non se extendit ad Socios, & assistentes, vt in puncto Merlin. Pignattell. contr. forens. cap. 47. n. 2 1. cent. 1.

Non loquor de Dominico, & Francisco, quia isti duo vltimi veluti forenses non ligantur nostris Bannimentis, prò omnibus tamen militant omnia, & singula fundamenta pro minoratione poenæ, quæ militant pro Domino Guidone, cum accessoria non iudicentur ad imparia cum principali, vt in alia ostendi, non afferendo simpliciter Authoritatem vnius, vel alterius Doctoris, sed Decisiones Supremorum Magistratum, & hanc Sententiam seruari in Practica testatur Clas. §. Homicidium sub num. 51,

Ceterum enixe supplico, vt Illustrissimo Domino meo benigna fronte, ac serenis oculis perpendere placeat, quod Dominus Guido occidit, vt eius Honor tumulatus in infamia resurgeret. Occidit Vxorem, quia illi fuit opprobrio, & illius Genitores, qui postposita omni verecundia filiam repudiarunt, & declarare non erubuerunt esse Meretricis genitam, vt ipse dehonesta retur, cuius mentem peruerterunt, & ad illicitos Amores non pelleixerunt dumtaxat, sed vi obedientiæ filialis cogerunt. Occidit ne scilicet amplius in dedecore viueret Consanguineis inuisus, à Nobilibus notatus, relictus ab Amicis, ab omnibus derisus. Occidit in Urbe nempe, quæ alias fuit spectata Nobilem Matronam abluere maculas Pudicitæ proprio sanguine, quas ipsa inuita, & reluctante filius Regis impedit, morte propria alterius culpam, & violentiam expiando Valer. Maxim. lib. 6. cap. 1. num. 1. Tit. Liu. lib. 1. Histor. Et quæ vidit Patrem vnde quaque impunem, & non illaudatum se polluentem Parricidio filiæ, ne raperetur ad stupra Valer. Maxim. ubi supra num. 2. Tit. Liu. ib. 3. Histor. tanti illi cordi fuit ammittendi Honoris suspicio, vt potius voluerit orbari filia, quam illa incederet inhonesta, licet non sponte. Occidit in propria Domo, vt Adultera, eiusque Parentes conscienti agnoscerent nullum locum, nullumque asylum esse tutum, & impenerabilem Honori læso, neue ibi continuarentur opprobria, & Domus quæ turpium Testis fuit, esset & penæ. Occidit, quia alio

alio modo non poterat eius existimatio læsa tam enormiter
ducere cicatrices . Occidit ut exemplum præberet Vxoribus
Sacra Iura Coniugij religiosè esse feruanda . Occidit deni-
que , ut pro posse honestus viueret , fin minus proprij Hono-
ris offensi commiseranda victima caderet .

Quarè &c.

H. de Archangelis Pauperum Procurator .

Illustriſ. & Reuerendiss. D.
Vrbis

GVBERNATORE

In Criminalibus.

Romana Homicidiorum.

P R O

Domino Guidone Francischino, & So-
cijs Carceratis.

C O N C I L I U M

Fiscum.

Noua Facti, & Iuris Domini Procu-
ratoris Pauperum, cum Summario.

ROMÆ , Typis R. Cam. Apost. 1698.

Romana Homicidiorum.

Ill. me. & Reu. me Dñe. Confessiones D. Guidonis Francischini,
Dominici Gambassini, Francisci Pasquini, & Alexandri Baldeschi eius sociorum sunt nullæ, propterçà non attendenda, cùm scilicet emanauerint metu rigorosi Tormenti Vigiliæ eisdem iniuste decreti. *Bertazzoli conf. crim. 341. nn. 32. Giurb. conf. 8. nn. 19. Hect. felie. aliegar. 106. num. 1. Matthieu de re Crimin. confrou. 27. nn. 26.* & id quamuis ipsi in eisdem Confessionibus fortasè adhuc perseverent *Paul. de Castr. conf. 273. nn. 1. vol. 1.*

Vt enim dicebanus in præterita ex gratia reassumenda, Confessio sa. me. Pauli V. edita super Reformatione Tribunalium Urbis, quæ est in ordine la 71. tit. de Iudic. Criminal. qui est §. 10. num. 30. to. 3. Bullary noui pag. 198. mandat hoc Tormentum non inferri nisi duobus copulatiuè concurrentibus, altero, quod Reus sit grauatus Indicijs vrgenteissimis, altero, quod delictum sit atrocissimum, & de praxi testantur *Dôctores allegati in dicta mea Informatione S. Quatenus verò Fiscus.*

Neque verò suffragari possunt assertæ facultates huius Tribunalis, quia qualescumque illæ sint, non habent locum, nisi in delictis poena mortis puniendis *D. Raynald. obseru par. 1. cap. 5. §. 1. ad tertium num. 121. & seq. vbi rationem reddit*, quia quando Reus non est damnandus ad mortem, pro habenda ab eo Confessione, non est exponentus Tormento, quod potest illam causare, prout ferè cauauit Alexando, qui per duas vices in eodem Tormento lethaliter defecit.

Delictum autem, quod fuit imputatum Domino Guidoni, & sociis, & quod ipsi confessi sunt non esse primi, nec secundi generis latè fuit probatum in præterita; Et quidem cùm Dominus Guido fuerit motus ad occidendum siue occidi faciendum Franciscam Pompiliam Vxorem, Petrum, & Violantem Socros ex causa honoris, scilicet ob Adulterium, quod dicta Francisca Pompilia commisit conspirantibus, & adiuuantibus alijs, ista releuat à poena mortis non solum ipsum iuxta Textus, & *Dôctores allegatos in dicta Informatione S. Hoc stante cùm seq. iunctis S. prædictis nullatenus, & S. seq.*

A

Verum

Verum & Socios ex Doctoribus pariter allegatis in dicta Infor-
matione S. quae dicta sunt cum tribus seqq. quibus addi pos-
sunt Bald. in l. prima in secunda lectura num. 36. in fine, Cod.
unde vi; & in cap. de cetero, num. 4. vers. sed pone de sent. &
re Iudic. Ioann. de Anan. in cap. final. nu. 2. vers. ultimò pro
ampliori de Raptor. Incendiar. &c. Roman. in l. prima, S. V. su-
fructuarius, num. 17. ff. de oper. nou. nunciat. Marisl. in lege
unica nu. 13. & duobus Jegg. C. de Rapt. Virgin. Gabriel. con-
fsl. 170. nu. 3. ibi: *Et multò minus debent morte hi affici, quia*
cùm inspecta opinione hominum communis fabritium excuset à
graviori pena iustus Dolor. l. graccus, Cod. de Adulter. etiam
hi, qui ab ipso vocati, & adducti sunt, debent similiter excusari;
& nu. 13. lib. 1. Mazzol. confsl. 57. num. 18. Facchin. conf. 36.
num. 22. lib. 2. Alex. Rauden. var. cap. 7. num. 5. Grammatic.
super Confsl. Regni si Maritus, que est lib. 3. rubr. de pœn.
Vxor. in Adulter. deprehens. num. 12. pag. 109. Mattheu de re
Crimin. contr. 11. nu. 42. cumseq. Viu. decis. 197. nu. 26.

Absque eo, quod in præsenti amplius opponi possit, quod de
Causa honoris non constet, quia decretum Condemnato-
rium Canonici Caponiacchi pro dicto Adulterio emanatum
in hoc Tribunali die 24. Septembris proximè præteriti, &
quod datur per extensum in Summario num. 8. rem facit cla-
ram, & manifestam eaq. Vestra, S. quibuscumque, vers. cate-
rūm aliud est, & cap. quasitum de Cohabit. Cleric. & Mulier.
dicitur enim ibi: *Ioseph Maria Caponsacchio de Aretio pro*
Complicitate in fuga, & deviatione Francise Comparina, &
cognitione Carnali eiusdem, Relegatus per Triennium in Ciui-
tate Vesula: Nec ista verba dici possunt Titulus Causæ, qui
non facit quemquam Reum, vt supponit Dominus meus Fi-
isci Aduocatus, sed ipsummet Decretum, siquidem Titulus
Causæ à me visus in Processu originali fuit is, qui sequitur;
Aretij in Estruria fuge à viro.

In tantum verò dictus Canonicus fuit condemnatus dumtaxat
in dictam pœnam, quia ipse erat forensis, & deliquerat ex-
trà statum, quo casu debuisset solum dimitti cum exilio, Fa-
rin. quæst. 7. nu. 7. vers. sed quid erit faciendum in fine.

Nec verum est, quod fuerit recessum à dicto decreto, minusq;
de mandata illius moderatio, nil enim aliud habemus, quam
quod, vt aliqualiter indulgeretur assertæ adhuc honestati
Mulieris, & decori dicti Canonici, pro quibus acriter, & in-
cessan-

cessanter urgebat D. Procurator Charitatis eorum defensor, in mandato de excarcerando loco verborum dicti Decreti, fuerunt adhibita alia -- *Pro causa de qua in actis* -- quæ utiq. non important præcedentiū Correctionem, sed imò vii ualeat omnium Actorum, & consequenter etiam eiusdem Decreti Insertionem vulgata *l. assentato ff. de bared. Instit.*, cùm alijs per Paris. conf. 108. n. 47. lib. 1. Rot. coram Priolo decis. 423. n. 4. Eoq; magis cùm dictum Decretum immutari nec posuisse vtraque Parte non audit, vt ipsemet memini fuisse responsuū eidē D. Procuratori Instanti pro dicta moderatione per *Gloss.* in *l. diuersa, Cod. de Transact. Bartol. in l. acta verj Tertiam* opinionem, *Cod. de Re Iudicat.*

Sed ad quid modò insistere in præmissis, dūm ex tot tantisque in præsenti deducatis, & optimè more solito ponderatis per D. meum Procuratorem Pauperū (quæ quidem hīc non reperio pro euitanda Inutili superfluitate) concludenter adeò constat de dicto Adulterio, & Ulteriori etiam Inhonestate dictæ Mulieris, vt nullus remaneat dubitandi locus de Causa honoris, quæ verè impulit D. Guidonem ad delinqueudum; sufficeret enim, quod huiusmodi Causa verificaretur etiam postquam ipse Delictum commisit, vt in puncto consuluit Bertazzoli. conf. Crimin. 42. lib. 1. Masser. de re crim. consr. 12. num. 15. & seqq. Dond. consult. 97. num. 16 in fine Muta dec. Sicil. 61. num. 12. Dexart. dec. Sardin 5. num. 15.

Ulterius non est opus modo insistere in præmissis, quia D. Guido Causam honoris, & quidem respicientem non solum uxorem, sed ipso met Socros expressit in sua Confessione præser-tim fol. 98. ibi -- *Di poi è successa la fuga così obbrobriosa non solo alla Casa mia, che è Nobile, mà anco à quella di qual si-uoglia anche Persona Vile, la qual fuga fece di notte tempo col Canonico Caponsacchi, e Compagni, la quale in progresso, che fu accompagnata nella fuga dal Vittorino in calisse fù veduta dal medemo Vittorino dare bagi, & abbracciamenti al Judeito Cunonico, di poi hò hauuta noua, che dormirno asse-me in Foligno nell'osteria della posta, dipoi in Castelnouo, à segno tale, che resta conuinta per Adultera non solo per questo eccezzo, mà con altri simili, che hò sentito di poi habbia fatto in Arezzo con altre Persone -- fol. 672. à ergo, ibi -- E ricbie-stolo detto Santi, se hauesse voluso accudire di fare un affronto alli Comparini à causa dell'bonor mio, e dell'Insidie, che face-*

uano sopra alla mia vita, gli rispose il detto Alessandro, che l' hauerebbe fatto, e se fusse bisognato qualched'un altro, l'hauerebbe trouato, onde dopo alquanti giorni mi capitò in Casa Biagio altre volte nominato in Compagnia del citato Santi, e mi disse, che anche lui hauerebbe accudito, trattandosi specialmente di materia d'onore, e di machina di vita -- & fol. 678. ibi -- e mentre ci tratteneuamo neila vigna fudetta, cioè nella Casa di essa, si discorse di diuerse cose, e precisamente di quello, che si doueuà fare. cioè dell'affronto dà farsi alli Comparini, cioè Pietro, Violante, e Francesca mia moglie, di dare alli medemi delle ferite in riguardo, che li medemi mi hauemmo tolto l'onore, che è il principale, & ancora m'insidiano alla vita -- , & fol. 683. à tergo in fine ibi -- & hauerei da dir tanto, che se potrebbe scriuere fino à domattina, quando volesse raccontare tutti gli aggrauij, e spese, che ho riceuute da i Comparini fudetti, mà tutto questo non importaua niente, se non mi hauessero toccato nell'onore, & Insidiato alla vita -- & fol. 684. ibi -- Come, che Santi di sopra nominato era mio Lavoratore nella mia Villa di Vittiano, & inconsueta Informato di tutti gli aggrauij, che hauemmo riceuuti dà desti Comparini, & ancora haueua Informatione dell'Indecentissima fuga presa dà mia moglie nella forma altre uolte detta, se esso dà se di trouarmi, conforme mi trouò il nominato Alessandro ad effetto, che mi potesse accudire in euento, che io hauessi voluto vendicare il mio onore, e l'Insidia, che si faceuano alla mia vita -- & fol. 699. ibi -- e fu da mè arriuata in Castelnuovo con il Canonico Caponsacchi, dove furono arrestati dà sbirri, e pofta condotti in queste Carceri, e faggerei più volte nel Tribunale l'ecceso del Parto supposto, acciò si venisse à punire costoro, mà io non hauendo mai veduto, che siasi preso espedito sopra un affare di tanta importanza all'onor mio, son stato quasi necessitato à prenderne qualche resolution per recuperare quell'onore, che con tanta Infamia li Comparini medemi hauemmo riuerberata in me. La loro Ignominia -- & fol. 720. ibi -- e quello, che dissi ad Alessandro, Biagio, e Domenico, lo dissi ancora à Francesco in occasione, che il medemo sapendo gli aggrauij, che io hauemmo riceuuti nell'onore, mi se essibili di fare un smacco alla nominata mia moglie, & io all'ora gli risposi, che non merita la smacco, mà bensì la morte.

Huius-

Huiusmodi enī Confessio acceptari debet cūm sua qualitate, quam non potest Fiscus scindere, & ab illa separare ex vulgata Theorica Bart. in l. Aurelius, § itēm quesjt, ff. de libert. leg. Farin. conf. 67. num. 8. & conf. 187. num. 5. & quæst. 81. num. 157. Vermigl. conf. 282. n. 8. Guazin. def 30. cap. 7. n. 5. & defens. 32. cap. 35. num. 1. vers. sed contrarium, & num. 2. Matthieu de Re Crimin. contr. 18. num. 60. Triuifan. decis. 46. num. 32. lib. 2. vbi quod distinctiones, quæ solent ab aliquibus asserti, procedunt in Ciuilibus, non autem in Criminalibus, Sperel. decis. 64. num. 16. & decis. 108. num. 36. & decis. 136. num. 27. Rot. coram Merlin. decis. 103. num. 2. & in re- cen. decis. 308. num. 9. par. 13. & decis. 57. num. vlt. par. 17.

Indubitanter quandō, prout in præsenti, agitur ad effectum puniendi pœna ordinaria, quidquid secūs dici possit secundūm aliquos ad effectum infigendi extraordinariam, Abb. in cap. auditis, num. 32. vers. putat tamen, de præscript. Vermigl. conf. 325. num. 6. Bertazzol. conf. crim. 27. n. 2. lib. 1. & conf. 449. num. 30. & 31. & conf. 450. per tot. lib. 2. Farin. quæst. 81. per totam, & præcipue num. 112. & 157. Gomes. var. resol. tit. de homicid. cap. 3. num. 26. Foller. verb. & si confessbuntur, n. 46. Ludou. decis. Lucens. 19. per totam, & præcipue num. 12. vbi Conclusionem extendit ad omnes qualificatas Confessiones in quoquis genere Delictorum.

Præsertim quando, qualitas aliundē non solum admiculatur, sed concludenter iustificatur; Vermigl. conf. 282. num. 12. conf. 431. num. 7. Ciriac. contr. 637. num. 7. Farinacc. quæst. 103. num. 157. Angel. de Confess. lib. 3. quæst. 11. num. 24. Ultrā enī dictum Decretum, & alia superiū animadueraſa habemus socios Criminis expreſſe deponentes ſe fuſſe requiſitos a D. Guidone ad vna cūm ipſo delinquendū ex prædicta Causa signanter Blasium Agostinelli fol. 316. ibi -- quale Sig. Guido mi raccontò, che gli ſi era fuggita la moglie con un'Abbate, e che gli haueua portate via denari, e gioie, menandomi nella ſtanza, doue gli haueua leuate dette gioie, e denari, e mi diffe, che lui voлеua venire à Roma ad ammazzare la ſua moglie, e vołeua, che io, e detto Alessandro foſſimo ve- nuti con lui, &c. & fol. 317. ibi -- & in tale occaſione detto Sig. Guido mi diffe, che la ſudetta ſua moglie per fuggire ſicura- mènte con detto Abbatte, & acciò, che lui non ſe ne fuſſe accor- to, haueua mefſo l'oppio nel vino per la Cena per far' addor-

A 3 men-

mentare lui con tutti , e che litigava con il suo Socero , quale
non solo haueua giurato , che detta sua moglie non fosse di lui
figlia , mà di più l'haueua ripigliata in Casa , dopo , che gli s'era
fuggita , benche lui l'hauesse messa nel Monastero , dopo , che l'ar-
riuo in Castel nouo nella fuga , - & Alexandrum Baldeschi fol.
623. ibi -- desso Sig Guido alla presenza mia , come di Biagio ,
di Francesco , e di Domenico , &c , disse , che si doveua ammaz-
zare la Jua Donna , cioè la sua Moglie , che stava qui in Roma
à causa di ricomprare l'onore , & anche il Padre , e la Madre
di detta sua moglie , perche tenevano mano à detta sua moglie
al torto , che gli faceua nell'onore , + & fol. 645. ter. ibi --
ci disse anche alla presenza del Vignarolo , che si doveua ammaz-
zare la Moglie , il Suocero , e la Suocera , perche detti Suocero ,
e Suocera tenevano mano al mal fare alla figlia , e gli faceua-
no li Ruffiani , e perche anco diceua desso Guido , che detti gen-
ti , che si doveuano ammazzare , voleuano fare ammazzare
lui , cioè esso Guido .

Causam autem honoris excludere non valent attestations eorum ,
qui assistentiā præbuerunt Franciscæ Pompiliæ vsq; ad obitum
super declaratio[n]e ab eadem facta de numquām violata fide
coniugali ; quia sunt simplices fides extra iudiciales , quæ non
faciunt fidem , Cyriac. contr. 61. num. 6. & contr. 284. nu. 66.
Rot. rec. decis. 290. num. 2. in fin. par. 3.

Præsertim cùm fuerint extortæ , & emendicatæ pendente liceat
parte non citata per Hæredem eiusdem Franciscæ Pompiliæ
ad evitandas vexationes Monasterij Conuertitarum præten-
dantis successionem ex causa in honestatis quodque propterea
sequestrari , & judicialiter describi fecit omnia bona hæredi-
taria eiusdem , Roland. conf. 40. num. 5. lib. 1. Ciriac. d. contr.
61. num. 6. Rot. recen. decis. 323. num. 4. par. 2. & decis. 221.
num. 14. par. 16.

Maxime cum aliqui ex Testibus ut suprà deponentibus sint lu-
gatarij eiusdem Franciscæ Pompiliæ , ita ut ipsi deposituerint
ad proprium commodum ; subsistente enim in honestate bo-
na devoluerentur ad dictum Monasterium , & consequenter
ipsi remanerent exclusi à suis legatis , 1. nullus ff. de Testib.
1. omnibus C. eod. Crauett. conf. 99. num. 2. & conf. 112. nu. 10.
Bertazzol. conf. crimin. 60. num. 8. lib. 1.

Et quatenus fidem facerent , huiusmodi declaratio ad nihilum
descriri retinet , quia nemo presumitur velle detegere propriam
tur-

eturitudinem, vt in his terminis respondit; *Ros. diuers. par. 4.*
decis. 276. num. 4. Et sicuti non fuisset credendum ipsi met
Franciscæ Pompiliae præsertim extrâ iudicium, & sine Iura-
mento deponenti, *Foller. in practic. verb.* & si confitebuntur
in 2. par. 3. partis principalis num. 9. & seqq. cùm alijs addu-
ctis per *Farinacc. quæst. 43. num. 23.* ita, & multò minus cre-
dendum venit prædictis Testibus nè plus fidei adhibeatur
exemplo, quam originali *vulg. cap. fraternitatis de hereticis.*
Farinacc. quæst. 69. num. 85. Cyriac. controu. 250. num. 9.

Nec valet dici, quod nemo præsumatur immemor salutis æter-
nae; quia nec omnes præsumunt esse S. Ioannes Baptista, vt
dicit *Bald. in tit. de Pac. Constant. verb.* *Vassalli il primo in-*
uibus feudorum, præsertim vbi agitur de præiudicio tertij;
Bartol. in l. si quis S. si quis moriens ff. ad Senat Consul Syllan.
In fortioribus terminis *Marsil. in pract. S. Restat num. 12., &*
16. in fin. Bertazzol. conf. crimin. 234. nu pr. lib. pr. Prat. respons.
crim. 23. n. 32., & seqq. Rouit super pragmat. Regn. tit. de recept.
delinquent pragmat. 6. num. 5. Farinac. d. quæst. 43. num. 28. cum
duob seqq. & quæst. 46. n. 72. Hyeronim. Laurent. decis. Auenion.
15. num. 16. iuncto num. 8. ed magis quandò agitur ad effectu
grauius puniendi eiusdem declarantis inimicum; Mafcard. de-
probat concl. 144. num. 8., & seqq.

Subsistente itaq; Causa honoris nūl prorsus officit, quod dicta
homicidia fuerint cōmissa ex Interuello iuxta latissimè firma-
ta in præterita §. nec verum est, usq; ad § prædictis nullatenus,
vbi ostensum fuit hanc esse communissimam Doctorum opi-
nionem, & iuxta illam passim Iudicari non solùm in Sacra
Consulta, verum etiā in omnibus alijs Tribunalibus Mundi,
vt benè animaduertit *Mattheu* allegatus in dicta præterita
de *Re Crimin. controu. 12. num. 7., & 21.*

A qua quidem opinione in præsenti recedi nequit ex eo, quod
D. Guido vxorem non occiderit in actu depræhensionis eius-
dem in fuga cùm Amasio; quinidem contentus fuerit illam
deferre iudicii vti Adulteram; quiā cùm tunc ei non fuerit
tutum illam occidere (quiā ipse erat solus, illa autem in fo-
cierate dicti Amasij Iuuenis fortis, strenui, armis muniri, &
delinquere soliti; & quod magis est prompti, & parati ad re-
sistendum ne amata Amarillis eidem raperetur, quemadmo-
dum & ipsa prompta fuit, & parata ad Impediendum en-
tiam

etiam capto, & denudato, vt dilectus Mirtillus non offendetur) non propterè censeri debet eidem pepercisse, & Iniuriam remisisse, sed cū, ne aufugeret in longinquiores partes, fine spe debitæ vindictæ, iustus, & repentinus dolor tunc illi consuluerit eam arrestari facere per birroarios, vt cùm primū commodè posset illam occideret, peruenta postmodum comoda occasione, si illam occidit, reputari debet, ac si incontinenti eamdem occidisset in puncio *Ruin.* *conf.* 2. *num.* 7. *vers.*
si maritus occiderit vxorem lib. 5. *Giurb.* *conf.* 86. *num.* 19. *vers.*
sic maritus, & *num.* 21., *Io. Franc.* *de Pont.* *conf.* 98. *num.* 24., &
seqq. usq; ad *nu.* 33. *vol. pr.* repetit. subiùs decisionem *San Falic.*
337. num. 81., & seqq. usq; ad *nu.* 90. *Prat.* *respons.* *crim.* 25. *n.* 31.,
& seqq. *Cabrer.* *de met. lib.* 2. *cap.* 45. *num.* 13., *vers.* celebris
succedit *Quæstio*, & *vers.* *realis* est, *Paschal.* *de patr.* *poteſt.* *par.*
pr. cap. 5. *sub num.* 3., *Mattheu de re Crimin.* *contr.* 12. *n.* 28.
nouar. in *Summ. Bullar.* *par. pr.* *Commentar.* 72. *num.* 81. *vers.* ex
quo *Adulterio*, *Polic.* *de Reg.* *Aud.* *T.* 0. 2. *tit.* 10. *cap.* 7. *num.* 29.
vers. quemadmodum tunc dicitur incontinenti, *Marta vot.*, scilicet
decis. 206. *num.* 7., & *num.* 10., praesertim in *vers.* sed quando
committitur, *Mut.* *decis.* *Sicil.* 61. *sub num.* 11. *Gizzarelli.* *decis.*
18. num. 5., ibiq; *Baldax.* *de Angel.* *nu.* 4. & *Didac.* *de Mari*
sub num. 7. *Panimoll.* *decis.* 86. *num.* 29., & duobus seqq.

Et generaliter, quod ea, quæ fiunt ex Intervallo dicantur fieri
incontinenti, si fuerunt facta cùm primū fuit oblata occasio
illa faciendi, est *Textus in l. 2. §. Confessim*, ibi -- *Confessim* --
autem sic erit accipendum, ubi primum potuit -- ff. ad *Sen.*
Consult. *Tercullian.*, *Bellon.* *de potest.* *eorum*, quæ fiunt inconti-
nenti, *lib. pr. cap.* 6. *num.* 5., & pluribus seqq.

Et tantum abest, quod lex præsumat hanc Injuriam à marito re-
missam, vt imò credat semper in illo durare animum vinci-
scendi, ex quo sit, vt vxor teneatur etiā sibi præcauere, adeò,
vt ipsius cædes posteà sequuta numquād dicatur proditoria
Mastrill. *ad Indulg.* *gener.* *cap.* 29. *num.* 6. *vers.* sed quid si mari-
tus, *Nouar.* in *Summ. Bullar.* *dicta par. pr.* *Comment.* 72. n. 81.,
Donde. *consult.* 97. *num.* 16. *vers.* alioquin, ad quod multūm
facit etiā *Mut.* *dicta decis.* *Sicil.* 61. *per totam*, ubi est casus
de marito, qui fecerat vocari vxorem per filium extrā mœnia
Civitatis, vt tutò illam ibi occideret, & tamè maritus fuit
damnatus solum ad Remigandum per septennium.

Et

Et facit etiā id, quod alij Doctores tradunt, quod scilicet maritus possit dissimulare turpitudinem suæ vxoris, ut tuto potest de illa vindictam sumat *Io.de Amic.conf 4.nu.4., Anonym.apud Sanfelic.dicta decis. 337.num. 37. in fine, & n. 59.Dond.consult. 97. num. 16.* sicuti potest illam dissimulari facere per vxorem, ut securè sumat vindictam de illo, qui vult eius pudicitiam offendere iuxta famigeratissimum Consilium *Castr. 277.lib. 2.*

Tantò magis, quod ab ipsomet D. Procuratore Charitatis defensore dicta Franciscæ Pompiliæ, & Canonici Camponsachij in sua allegatione impressa S. borreret quidèm *Animus dictus D. Guido* fuit reprehensus de huiusmodi delatione ad Iudicem, per ea, quæ aduertunt *Castr. dicto conf. 277. sub num. 3. propè fin. vers. sed nec Iudices, lib. 2., Menoch. de Arbitr. cas. 398. num. 26., Neuizan. Silu. nuptial. lib. pr. vers. non est nubendum nu. 34., & num. 89., Soc. cin. lun. conf. 34. nu. 9. lib. 2. Nouar. in Summ. Bullar. Comment. 72. sub num. 81. vers. vnde merito; quorū plures & nos allegauimus in nostra præterita Informatione S., & bæc noſtræ, Asserunt enim vnanimiter prædicti DD., quod mariti reputantur viles, & Cornuti, si proprijs manibus non sumunt vindictam, sed expectant illam fieri per Iudices, qui summoperè rident, & cachinantur, vnde non mirum, si Iufelix maritus etiā post dictum recursum factum ad Iudicem, quem tunc illi suggestit Inconsultus Iræ Calor, voluit de amissô honore se vindicare; deliquit enim, vt vulgi, & Doctorū Censuram euitaret, & sic ne amissô honori istam quoq; Ignominiam superadderet.*

Nil autem releuat, quod D. Guido in dicta sua Confessione aliquando ultrà Causam honoris expresserit etiam illam Insidiarum, quæ tendebantur suæ vitæ, quia cum illa honoris fuerit potissima in ipsius mente, vt ipsemet asserit d. fol. 678. ibi - *In riguardo, che li medemi mi haueuano tolto l'onore, che è il Principale - non est curandum de alia, quæ tamquam Debilior, prædictæ venit post ponenda, vt præuentiuè firmatum fuit, in præterita, S. & in omnem Casum, vbi p'ræ cæteris adduximus in his præcisæ terminis loquentem Mæthieu de Re Crimin. contr. 11. num. 37. & duob. seq.*

Et quatenus hanc etiam Causam attendere velimus, ista pariter est sufficiens ad euadendam Pœnam ordinariam l. 1. Cod. quādo

do lic. unicuique, l. si ut allegas, Cod. ad leg. Cornel. de Sicar. l.
nec timorem t. vers. stimuit enim mortem, & vers. id est iustus fuit
timor, ff. de eo, quod metus Caus. , Innoc. in cap. si verò 3. sub
num. 1. de sent. excom. Bertazzol. conf. Crimin. 433. num. 4. &
seqq. & conf 434. num. 22. Thob. Non. conf. 109. num. 6. Cepol.
Crimin. 41. num. 10. usque ad finem, Farin. conf. 35. num. 22.
Cyriac. contr. 105. num. 73. & seqq. Boer. dec. 169. num. 2. Gram-
matic. dec. 5. per totam, Baldax. de Angel. in Addit. ad Gizza-
rel. dec. 5. num. 6.

Agnoscit fiscus relevantiam prædictorum; idcirco recurrit ad Circumstantias delictum concomitantes, nempè Coadunationem hominum Armatorum, litem vertentem inter Dominum Guidonem, & Comparinos, qualitatem Armorum prohibitorum, & denique ad locum vbi delictum fuit commissum, cum scilicet Francisea Pompilia detineretur loco Carceris in domo in qua fuit occisa, sed facilis est Responsio, quia huiusmodi circumstantiae possunt quidem aliquatenus exasperare pœnam delicti Principalis, sed nullatenus illam extollere ad summum apicem, adeo, vt D. Guido, eiusque Socij ultimo supplicio veniant puniendi; sic decisum in terminis habemus apud mut. d. decif. scilicet o. presertim in fine, ibi - facta ergo relatione in visita generali mense Martij 1617. coram excellentia sua, ex quo visus fuit malus modus eam occidendi sic vocata per filium, & postea eius Cadauer quasi repertum fuit, quod Canes commedebant extrā d. mania, fuit ipse Leonardus condemnatus super regys Trieribus per annos septem - Sonfelic. d. decif. 337. num. 13. ibi. & quamvis aliqui ipsorum fuerint damnati ad relegandum fuit ex causa incisionis Genitalium de facto, pro quo delicto dicebat Fiscus esse puniendos leg. Cornelia pœna de Sicarijs - Mattheu de re Crimin. d. constr. 11. num. 46. ibi - atre maturius in Aula persensa iudicatum fuit Maritum nimis dolosè operatum fuisse absentiam simulando, fratrem secum ducendo, atque Armis prohibitis necando; quia solus ex usu Armorum igneorum delictum redditur infidiosum apud nos &c. sic decisum fuit propter hunc excessum condemnandum fore in pœnam exiliij per quadriennium, & ad soluendum duos mille ducatos &c. que in gradu supplicationis fuis confirmata - & contr. 12. sub n. 29. ibi - Et sic decisum in specie proposita condemnando Franciscum Palo-

*Palomeque in pœnam Remigij per decennium &c. ex qualitate
Armorum igneorum pœnam aggrauando; in milie pœnam fuit
condemnatus Antonius Aluarez, qui uxorem appensate occi-
derat, quia meretricabatur &c. ex eo exacerbata pœna, quod
omissus Iudicatus fuit, cum non conquereretur de simplici adul-
terio, sed de vita meretricis quod perfici nequibat sine desidia,
vel conuenientia Mariti.*

Et ratio est manifesta, quia negari non potest, quin D. Guido, eiusque Socij prædicta omnia gesserint ex eadem Causa ho-
noris, propterea sicuti ista reputatur sufficiens ad euaden-
dam pœnam ordinariam homicidij, de qua toto titulo ff. &
Cod. ad l. Cornel. de Sicar. ita pariformiter sufficiens reputari
debet ad effugiendas alias qualcumque pœnas appositas in
Constitutionibus Apostolicis contraria committentes alia deli-
cta in eisdem expressa; semper enim attenditur principale
propositum in Delinquente; l. ff quis nec Causam ff certum
petatur; cuius etiam animus temper distinguit malefica, l. ve-
rum est, et l. qui iniuria ff de furt. ut in punto ad effectum
scilicet evitandi pœnam indicatam in Constitutione 75. sa. me.
Sixti V. Bullar. nou. T o. 2. pag. 468. contraria Coadunantes ho-
mines armatos, quoiescumque constat illos fuisse coadunans
tos ad effectum committendi aliud Delictum, scilicet frang-
gendi Carceres, & detentos in eis eximendi resoluerunt tres
Sacrae Rotæ Auditores celeberrimi, nempe Coccin. Blanchett.
et Oran., quorum vota habentur impressa inter decisiones
collectas per Farinacc. post eiusdem consl. vol. 2. dec. 51. ibique
Add. in fine, restatur sic fuisse resolutum in plena Camera, in
qua de mandato sa. me. Clementis VIII. Causa fuit proposi-
ta, & examinata.

Non refragante, quod postmodum incontrarium scripsérunt fo-
uendo partes fisci, cuius erat Aduocatus Spad. conf. 25. lib. 1.
quia eius opinio fuit ex professo confutata, & solidissimis ra-
tionibus, & argumentis reiecta à Vermigl. conf. 356. per tot.
et à D. Rainaldo obseru. par. 3 cap. 25. §. 4. à nu. 9. usque ad 33.
& ante eos idem quoque senserat Doctor Anonymus inter
Confil. Farin. conf. 65. à numer. 68. ad 141. et ipse met Farinacc.
quæst. 113. num. 60. Guazzin. de confis. amplias. 86. concl. 13.
num. 3.

Et in terminis ad effectum evitandi pœnam bannimentorum,
seu

seu Constitutionum Apostolicarum relationem Armorum prohibentium plures Doctores allegauit in præterita S. neque verò, & præ alijs Polic. de Reg. Aud. Tom. 2. tit. 10. cap. 6. num. 8. & sequentibus, qui latè materiam examinat, alias congerit Dominus meus Procurator Pauperum in sua presenti Informatione S. remanet tandem, quibus addo Caball. resol. crimin. cas. 62. per totum, Mattheu de crimin. dicta controuers. 11. num. 46. cum sequentibus, & dicta controuers. 12. sub num. 29. Capyc. latr. dec. 78. num. 7. vers. discussio tamen negatio, vbi quia actus preparatorius confunditur cum preparato, & testatur ita fuisse resolutum per Sac. Conf. Neap. & num. seq.

Similiter ad effectum effugiendi pñnam appositam contra occidentes detentum in Carceribus, & sic existentem sub custodia Principis plures Doctores allegauimus in præterita S. similiter nec agrauari, quibus nunc addo Prat. in addit. ad Pafchal. de Patr. potest. part. 3. cap. 6. vers. ex his quoque D. Raynald. obseru. part. 1. cap. 4. S. 1. ad 4. num. 65. & seqq. Mut. decis. Sicil. 36. in fine.

Nec quidquam facit, quod Polic. loco citato, & aliqui alij ex Doctribus proximè allegatis loquuntur de homicidio commisso in rixa, siue ad defensionem propriæ vitæ; intantum enim circumstantia rixæ relevat delinquentem ab ordinaria pñna delicti, inquantum ignoroscitur ei, qui voluit vlcisci provocatus, vt inquit Vlpianus in l. qui cum natu maior 14. S. idem puto ff. de Bon. libert. & in quantum ipse tunc iusto dolore præuentus non est in plenitudine intellectus, vt post Bald. in cap. 1. in fine, de paciuram. firmam. tradit. Boffit. de homic. n. 60. in fin. Vermigl. conf. 26. n. 8.

Vtraque autem ex his rationibus proculdubio militat in morte, & quocumque alio homicidium committente ex Causa honoris iuxta firmata in præterita S. hoc stante, & S. sequenti; etiam si id faciant ex interuallo ex allegatis pariter in præterita S. nec verum est cum multis seqq.

Et in his præcisis terminis, quod scilicet occidens vxorem adulteram ex interuallo excusat ob iustum dolorem, qui facit, quod ipse von sit in plenitudine intellectus præ ceteris firmant Carer. in præf. crimin. tract. 3. de homicid. S. sexto igitur excusat iustus dolor, num. 4. fol. 160. à tergo, Gomez ad l. T au-

¶ 80. num. 58. verfitem homo , Mattheu de re crimin. d. Controu. 12. n. 14.

Inquit enim Vlpianus in l. mariti 29. in princip. ff. ad l. Iuliam^d de adult. ibi : debuit enim uxori quoque irasci; que matrimonium eius violauit. Iram autem fieri ex dolore accepta contumelia , & naturam eo modo insurgere, vt illam à se depellat , quocumque modo potest, benè aduertit Zaceb. qq. Medicoleg. lib. 2. sit. 1. quæst. 6. num. 28. & seqq. cum difficultus sit iram cohibere, quam miracula facere, vt inquit D. Gregor. dial. 1. & aduertit Boff. sit. de homic. num. 60. Vermigl. conf. 26. num. 7. & conf. 43. num. 3.

Alij verò Doctores loquentes de committentibus homicidium pro defensione propriæ vitæ cum Armis prohibitis, & in Cereribus pariter suffragari debent, quia defensio honoris proprii, à viris ingenuis præsertim nobilibus nedum vitæ equi-paratur l. iusta ff. de manum. vend. sed ipsius et vita antefertur iuxta illud Apostol. epist. 1. ad Corinth. cap. 9. Expedite mibi magis mori , quam ut gloriam meam quis evacuet. Et D. Ambros. lib. 3. offic. cap. 4. Quis enim vitium Corporis , aut Patrimonij damnum non leuius ducat , vicio animi , & existimationis dispendio ? Marc. Tull. Philippic. 3. Ad decus , & libertatem natu sumus, aut hæc teneamus , aut cum dignitate moriamur . Menoch. conf. 96. num. 15. & conf. 98. num. 8. , Valenz. conf. 92. n. 1. usque ad 7. , Prat. respons. crimin. 25. num. 29. & pluribus seqq. Joseph Mele in addit. ad Gizzarel. decif. 18. num. 6. & sequentibus , in his terminis Bertazzol. conf. 42. num. 6. Dond. consult 97. num. 8. & 9. Sanfelic. dec. 337. seu in allegat. Aduocat. ibidem Impress. num. 34. & seqq. Panimoll. decif. 86. num. 23. & seqq.

Adeò, vt qui honorem suum spernit, & non curat recuperare se, vlciscendo nil differat à Belluis, Gizzarel. dicta decif. 18. n. 5. num. 5. Calderò decif. 42. sub num. 35. & alij ex mox citatis ; Quinimò irrationabilior ipsi simet Belluis reputetur, iuxta aurea verba Theodorici apud Cassiodor. lib. 1. var. epist. 37. , quæ nos retulimus in præterita S. Nec verum est post medium, Bertazzol. dicto conf. 42. num. 9. vers. & si non est plus quam Bestia.

Qnouerò ad litem, quæ vertebat inter Domlnum Guidonem , & illos de Comparinis super suppositione Partus, vtrà mox dīga,

Et iterum supplice animaduerti quod Constitutio Alexandrina non intrat , vbi ex parte offensi præcessit aliqua prouocat, ut benè firmat Farinae. conf. 67. per totum, sequendo decisionem Rotæ , quam penit in calce eiusdem Consilij, & nos præuentiuè perpendimus in præterita §. absque eo quod , quæ quidem prouocatio in presenti resultat ex iniuria; quam dicti de Comparinis pendente lite irrogarunt eidem D. Guidoni propter complicitatem habitam in d. fuga, & in adulterio per filiam illius occasione commisso .

Altera lis , quæ præteaditur mota per Franciscam Pompiliam aduersus Dominum Guidonem super diuortio, potuisse omitti , quia ultra animaduersa per Dominum meum Procuratorem Pauperum in sua presenti Informatione §. quæ etiam appetantur, ea fuit nulliter intentata , exequuto scilicet, vt mihi supponitur, monitorio dumtaxat contra Dominum Abbatem Paulum fratrem Domini Guidonis, qui nullum ad hoc mandatum habebat, præcipue non probato, quod idem D. Guido habuerit scientiam eiusdem litis , ut prætenditur , intentata.

Quoad Blasium Agostinelli abundè fuit scriptum in præterita , cùm scilicet ipse non fuerit denudò constitutus , & in præcedentibus fassus fuerit dumtaxat adstitisse dictis homicidijs , non autem manus apposuisse , ita , ut illum nullatenus afficeret possit rigorosa opinio Caball. resol. criminal. cas. 300. numero 73. dicentes huiusmodi Auxiliatores haud esse immunes à pœna homicidijs, quotiescumque proprijs manibus aliquem occidant , quamquam huius authoris opinio fuerit per nos erronea demonstrata in præterita in §. quidquid in contrarium ,

Voluissim etiam aliquid addere dictis in præterita super forensitate , & minori ætate Dominici , & Francisci ; Verum quia nondum benè innotuit , quo iure Fiscus prætendat illas elidere, ideo satisfaciā in Responce, pro certo credens in præsenti non euenturum , quod Dominus meus Fisci Aduocatus suas allegationes conficiat , & nostris etiam respondeat absque eo , quod mihi communicentur , prout cum summanè dum mei, sed aliorum admiratione contigit in præterita ; ipse enim , sicut & ego vnicè debemus querere veritatem , cuiusque esse Aduocati, sicuti ambo sumus officiales Principis, iuxta

*iuxta animaduersa per Dominum Rainald. obseru. p. 2. cap. 19.
S. 1. n. 156.*, qui quidem nil aliud exoptat, quam, quod iustitia
ministretur, & cum agatur de pauperibus, carceratis, in
eorum causis pietas triumphare debet, quia ipsi sunt thesau-
rus Christi, ut bene ad nostrum propositum inquit Petrus
super Rit. M. C. Vic. rit. 23. n. 4. circa med.

Quate &c.

Desiderius Spretus Adu. Paup.

*Illustriſſ. & Reuerendiss. Dno
Vrbis
GVBERNATORE
*In Criminalibus.**

Romana Homicidiorum.

P R O

D. Guidone Francischino, & Socijs
Carceratis.

C O N T R A

Fiscum.

Noua Iuris D. Aduocati
Pauperum.

ROMÆ, Typis R. Cam. Apost. 1698.

Notizie di fatto , e di ragioni per la Causa Francelchini.

Pietro Comparini, le di cui sostanze non si stendeuano ad altro, che alla somma di dieci , in dodici mila scudi sotto- posti à fideicommisso , con peso anche di moltiplicare i frutti per vna buona porzione , che perciò hauerebbe douuto viuere parcamente per non ridursi in stato di misericordia, stante il vincolo di tutto il capitale , e di vna parte de medesimi frutti, essendo troppo indulgente alla gola, e dedito all'ozio, e hauendo preso moglie con pochissima dote , con essergli sopragiunte liti, venuta la reduzione de frutti de luoghi di Monte, & altre auuersità , si ridusse in stato assai pouero, e miserabile , à segno che, seguira più volte la di lui carcerazione per debito , e fatta l'indicazione de beni , riceuè dal Palazzo Apostolico la limosina segreta d'ogni mese .

Ritrouandosi in tali angustie, premedito maritare Francesca Pompilia sua figlia con qualche persona, che si prendesse cura di sostentarlo insieme con Violante Peruzzi sua Moglie , Donna molto caltra, e di gran loquacità , con il di cui parere haueua intrapreso l'affare , e fu stimato à proposito il partito con Guido Franceschini , il quale conducendo la Sposa, e i Genitori in Arezzo sua Patria, hauerebbe potuto trouare opportuno rimedio alle necessità dell'i medesimi, mediante l'affistenza in Roma dell'Abbate Paolo Franceschini di lui Fratello, huomo attivo, e diligente, con dar festo al patrimonio di Pietro sequestrato , e intrigato da suoi Creditori , onde essendo stata constituita la dote in luoghi ventisei di Monte , con la speranza della futura successione al rimanente de i beni in virtù del fideicommisso, al quale la Sposa era chiamata , fu abbracciato questo partito , come utile à Pietro, e sua moglie per liberarsi da gl'incommodi , ne quali si ritrouauano, e altresì vantaggioso alli Franceschini , che attesa la diligenza dell'Abbate , e qualche dispendio temporaneo della Casa , poteuano credere di douere guadagnare à suo tempo il peculio predetto quasi intiero, e poco, o nulla deteriorato .

A

Tali

Tali furono à principio i scambievoli oggetti dell'insusto matrimonio , dal che si conosce , quanto sia debole pretesto il dire , che Guido ne i trattati ingaunasse Pietro , e la Moglie nel dar nota di godere yn'annua Entrata di scudi mille settecento , trouata poi molto inferiore , perche il fine primario , con cui fù concluso , poteua molto ben conseguirsi , anche con vn'Entrata di somma molto minore , sapendosi in effetto , che essendo stata mostrata da Violante l'istessa nota à Pietro Comparini , disse nel vederla *oh oh mi basterebbe solo che fosse la metà* , e sarebbe stata grandissima balordagine di Pietro , che ad vna semplice nota di vn Forestiere , senza pigliare altre informazioni , hauessi dato marito alla figlia , ogni volta , che la causa impulsiva fosse proceduta dalle presupposte facoltà in detta nota : Anzi ne meno ingrado di conuenienza , e ciuità puol essere riconuenuto Guido , perche quando da Pietro fù prodotto in giudizio la detta nota , l'Abbate Paolo Franceschini ne restò fortemente marauigliato , onde sgridatone con lettere il fratello , questo rispose hauer ciò fatto à persuasione di Violante , la quale desiderando l'effettuazione del matrimonio , e vedendo irresoluto il Marito , per animarlo , indusse Guido à dare la sudetta nota con alterazlone .

Hebbe dunque effetto il matrimonio , e tutti insieme si condussero alla Città d'Arezzo , dove i Comparini non furono maltrattati , come si pretende di giustificare da vna fede extrajudiciale di vna Serua partita di Casa con dilusto , la di cui sola lettura basta per farla conoscere fatta con animo cattivo , e à istigatione di altri , conforme ella medesima si è dichiarata con diuerle persone , dimostrandolo con naufragia l'insipida affetezzione , con cui è concepita , e specialmente , doue dice , che vn'Agnellino di latte si faceua seruire per alimento sufficiente per sette , ò otto persone in vna settimana , intiera con altre simili improprietà da non credersi , mà furono trattati con ogni honoreuolezza , e decoro , conforme attestano Monsignore Vescouo , e il Signore Commissario di detta Città , Soggetti molto qualificati , e molto più degni della Serua maligna , e subornata , e si puole hauere ancora l'attestazione di uno , che hà seruito [in quella Casa per tre-dici mesi , nel tempo , che vi sono stati li suddetti Pietro , e Violante

lante, potendo raccontare molte particolarità de i buoni etatamenti, che riceueuano da i Franceschini.

Ben è vero, che nacquero disturbii di considerazione in quella Casa cagionati dalla lingua mordace di Pietro, e dalla superbia di Violante sua Moglie, mentre beffandosi di tutti gl'andamenti, che faceuano i Franceschini, auanzandosi con atti di superiorità, portarono alla Madre de i Franceschini, e con essa à tutti gl'altri della famiglia, trauagli rileuantissimi, dissimulati però all' hora, per non violare le leggi dell'Hospitalità, e ciò non ostante, quando Pietro, e la Moglie si disposero per il ritorno à Roma, subito che n'espreissero i loro voleri, furono proueduti di danaro per il viaggio, e in Roma di mobili per riordinare la Casa derelitta.

Giunti in Roma Pietro, e Violante, fu spedito monitorio giudiciale à istanza di Pietro, in cui egli espone, che Francesca Pompilia realmente non era sua figlia, e però non era tenuto sodisfare alla dote promessa, e per giustificarlo portò l'attestazione dell'istessa Violante sua Moglie, quale in sostanza diceua, che ella medesima per tenere à dietro i Creditori del Marito in vittù dell'i fideicommissi, e per godere anche il frutto de Luoghi di Monte, hauena finto d'essere gravida, e poi d'hauer partorita vna figlia, cioè la detta Francesca Pompilia hauuta da vna vilissima partoriente per opera di vna Osterrice.

Da vn'atto si blasimeuole diuulgato in vn subito per tutta la Corte, nacque per necessità di natura ne i Franceschini vn' odio intenso verso gl'Autori di esso; mà poterono astenersi da i douuti risentimenti con la speranza, che, se Francesca Pompilia non fosse stata figlia di Pietro, e Violante, come si era presupposta nelli sponsali, si sarebbe potuto annullare il matrimonio, e così purgarsi da tal macchia la loro reputazione. Testimonij di questi loro sentimenti sono molti Dottori, e Virtuosi, che furono richiesti da i Franceschini, à studiarne il punto, e dirne il loro parere, mà perche questi furono discordanti, non vollero allora i Franceschini cimentarsi à vna impresa d'esito dubbio, nella cui promozione douea necessariamente confessarsi, e presupporsi la non filiazione, dalla quale confessione poi sarebbero re-

stati pregiudicati nell'interesse della dote, e perciò stimarono bene il tralasciare per all' hora d'esporsi al pericolo di perder la dote, e di non poter dare di nullità al matrimonio.

S'opposero bensì al monitorio, e ottennero per Francesca Pompilia la manutentione nel quasi possesso della filiazione, e il decreto per trasferire i luoghi di Monte dotali, mà esfendosi Pietro appellato da tal Decreto, nel far proporre la Causa nella Segnatura di Giustizia, venne à vna copiosa distributione di Scritture per Roma, fatte da lui stampare di grauissimo pregiudizio all'honore de Franceschini, per non dire infamatorie, i quali hebbero di nuovo tanta forza da poter raffrenare i giusti risentimenti dell'animo loro irritato sù la riflessione della speranza, che haueuano di poter far conoscere alla Corte, come segùi, non meno le menzogne de gl'Auuersarij, che il loro proprio candore, e abuuiati da questa speranza, soffritono susseguentemente con ogni patienza moltissime vessationi orditeli con diverse Cabbale, e tergiuersazioni per impedire l'effetto della traslazione de luoghi de Monte dotali, con hauerli suscitatî i Comparini vari suoi Creditori, ò fossero veri, ò pure colbusui, onde stante le dette opposizioni, pruarono bensì l'incommodo, e la spesa della traslazione, mà non già il commodo del frutto, di cui ne pure vn bimestre poterono già mai riscuotere.

In tale stato erano giunti gl'affari dell'vna, e l'altra parte, quando Guido leuatosi vna mattina trouò mancati nel letto la moglie, onde immediatamente leuatosi, vidde sualigati li Scrigni, e fuggita la Donna, non senza sospetto d'hauer dato il sonnifero la sera antecedente al medesimo Guido, e a tutta la famiglia, e sù la consideratione d'essere ciò succeduto per le suggestioni di Pietro, e Violante, conforme n'haueua più volte sentite le minacce, s'incaminò velocemente per la strada di Roma, e doppo vn precipitoso viaggio giunse la fuggitiva nell'Osteria di Castel nuovo accompagnata dal Canonico Caponsacchi d'Arezzo, elperche esfendo solo, e disarmato, e quelli armati, e risoluti, si conobbe insufficiente à vendicare tale ecceso, stimò opportuno di farli arrestare con il ricorso alla Corte di detto Luogo,

la

la quale hauendo fatto catturare da suoi Sbirri tutti due i fuggitiui, furono consegnati alla Corte di Monsignor Gouvernatore di Roma, e condotti alle Carceri nuove.

E benche sopra questo particolare faccia strepito il Fisco, che il Franceschini douesse vendicare i suoi oltraggi nell'atto del ritrovamento; per adeguata risposta si deve riflettere all'impossibilità di eseguire la vendetta per la precauzione di armi, con le quali seppe il Franceschini per il viaggio, che andauano premuniti i fuggitiui, a segno che la Donna, quando vide il Marito, hebbe ardimento di correrli alla vita col ferro nudo, per la qual cosa fu prudente temperamento in quell'istante di assicurare la fuga, mediante l'arresto, tanto più che all'ora non era noto l'adulterio della moglie, e forse hebbe repugnanza d'imbrattarsi le mani nel sangue di colei, che haueua tenuta più volte frà le sue braccia, mentre poteva restarli viua qualche speranza di rifarcire la sua reputazione per altre strade, che dell'uccisione.

Mà doppo, che furono trouate lettere degli medesimi fuggitiui scambievolmente amorose, sfacciate, disoneste, e preparatorie alla fuga, e dall'esame del Vetturino restò palese, che per viaggio in Calesse non faceuano altro, che baciarsi impuramente, e dal deposito dell'Oste si venne in cognizione, che haueuano dormito ambedue nella medesima Camera; e finalmente dalla sentenza, o decreto del Tribunale nella condannagione del Canonico Capponfacci alla relegatione per trè anni in Città Vecchia, per hauer conosciuto carnalmente *Francesca*, seguì la notorietà, e pubblicità dell'adulterio; Consideri ciascheduno, che hā sentimento di honore, in quali angustie, e agitazioni d'animo si trouasse il pouero Guido, mentre l'istessi animali irragionevoli con la maggior ferocia, che possa suggerirli l'istinto naturale, detestano, e abominano la contaminazione della fede coniugale, vendicando non solamente l'impudicitia delle loro Compagne, con l'uccisione dell'Adultero, mà ancora gl'oltraggi, e l'ingiurie, che si fanno alla reputazione de i loro Padroni, come racconta Elia. no nel lib. 11. *Histor. Animal. cap. 15.* di vn' Elefante, che vendicò l'adulterio del suo Padrone con la morte del-

la moglie , e dell'Adulterio trouati assieme nell'atto dell'adulterio , e vi sono anche altri simili esempi , come riferisce il *Tiraquell. in l. connub. l. 13. gloss. 1. num. 1. cum seqq.*

Ritorndo alla serie del fatto , è da saper si , che doppo la carcerazione de i fuggitui essendo venuto à Roma ancora Guido , e stando afflittissimo , e quasi delirante per l'eccesso della sua moglie ; da suoi buoni Amici fù confortato con la speranza , che questo attentato della fuga , congiunto con la mancanza della filiazione di Francesca , col di cui supposto contrasse li sponsali , hauerebbe facilitato il dissolimento del Matrimonio , e per questa strada si sarebbero cancellate tutte le macchie dell'offesa sua reputazione , onde egli con tale speranza se ne ritornò alla Patria , lasciando la condotta dell'affare all'Abbate suo fratello . Testimonio ne può essere Monsignore Segretario della Sacra Congregazione del Concilio , à cui l'Abbate Paolo rappresentò il fatto con supplicarlo à voler proporre in quella Sacra Congregazione l'articolo , sopra l'inualidità del Matrimonio à suo tempo , cioè doppo , che si fosse ottenuta la sentenza criminale nel Tribunale di Monsignore Governatore .

Frà tanto l'istesso Abbate atrese di proposito à sollecitare la terminazione di detta Causa criminale , e mentre Pompilia per non essere conuinta delle lettere amoroſe , era ricorsa al refugio di non sapere scriuere , fù facile all'Abbate poterla conuincere di questa inenzogua con l'esibizione de Capitoli matrimoniali sotoscritti di proprio pugno anche da ella , e da un Cardinale già defonto con la recognizione de' caratteri , ma ciò non ostante , essendosi diuulgati i meriti della causa da per tutto , s'accorse il medesimo Abbate , che in vece di esser compatito , à poco , à poco ogn'vno cominciaua à beffarlo , e deriderlo , conforme egli riferì à più persone , forsi perche sicome fù tentato in Roma d'introdurre il poter peccare impunemente contro la Legge di Dio con la Dottrina del Molinos , e col peccato filosofico , ilche fù impedito con l'autorità del S. Uffizio , così molti hauerebbero desiderato , che si scancellasſe dalla mente degl'huomini l'estimazione dell'onore , e della riputazione per poter peccare impunemente

mente contro le leggi humane , e dar luogo agl'adulterij senza alcun ritengo di vergogna , e di rossore .

E però certo , che l'Abbate vedendo prolungare il proseguimento della Causa , hebbe giusto motiuo di portarsi a' piedi di Nostro Signore con Memoriale , nel quale esponeua di non potere più resistere à tante , e così varie liti , e vessationi procedenti da questo infelicissimo matrimonio , supplicandolo à destinarli vna particolare Congregazione , per tutte le Cause , cioè della filiazione , fuga , adulterio , dote , & altre dependenti dal matrimonio , come anche sopra la di lui rescissione , mà non hauendo riportato altro rescritto , che *Ad Judices suos* , restò cecn la douuta rassegnazione al Prencipe , aspettando in primo luogo l'esito della predetta sentenza criminale , dalla quale sperava potersi risarcire almeno in parte la riputazione della sua Casa .

In tanto Pietro Comparini abbondante di danaro som ministrali con larga mano da persona ignota , e forsi amante della Gioiane , trionfaua baldanzoso , nei circoli , e nelle botteghe , luoghi di sua solita residenza , encomiando la risoluzione , e lo spirito di sua figlia nell'hauer saputo burlare i Franceschini con la fuga vituperosa , e con la rapina delle cose più preziose , e nell'hauer trouato ripiego di dare sì belle risposte al Giudice nei Constituti col riferirne le particolarità , vantandosi ancora , che in breue sarebbe tornata à casa sua al dispetto de i Franceschini , contro i quali hauerebbe mosso tante liti , e malanni , che farebbero stati costretti à tacere , e lasciar correre , delle quali cose se ne potranno hauere attestazioni da molte persone , quando bisognino , onde per tali pungenti iattanze , e per tanti strapazzi s'andava sempre più esacerbando l'animo di Guido , con tutto che hauesse procurato di fare ogni sforzo per raffrenare gl'impieti del suo sdegno da tante ingiurie prouocato .

Era stata Francesca Pompilia dalle carceri trasportata preuen-tiuamente nel Conservatorio chiamato della Scaletta , oue si trattenne per il corso d'alcuni mesi , nel qual tempo scoper-tasi gravida , e fatti molti tentatini per procurarne l'aborto , al di cui effetto le furono mandate più volte polueri , & altri ingredienti dalla Madre , ilche essendo riuscito indarno , fù con il pretesto di oppilazione , e necessità di purgarfi riman-

data alla Casa di Pietro, e Violante, dove seguì la riconoscenza della grauidanza con l'accesso de i Medici: mà la verità si è, che crescendo l'vtero, non vollero le Monache, che seguisse lo Igrauio di esso nel loro recinto, e perciò fu trovato il ripiego di farla vscire à cagione della fudetta oppilazione, e del bisogno di purga.

Or qui conuenne rompere i legami della sofferenza all'Abbate, che se bene restava offeso di ristesso, cioè nella persona, e onore di Guido suo fratello, nientedimeno pareuagli, che la fronte d'ogn'huomo fosse diuentata uno specchio, in cui rimirasse l'immagine del ludibrio di sua Casa, onde auiliosi l'animo suo per altro vitile, e costante, proruppe più volte in lagrime dirottissime di dolore fino à sentirsi sospinto ben spesio à gettarli nel fiume, conforme palesò à tutti i suoi Amici, e per fottarsi da si imminente pericolo, fece risolutione di abbandonar Roma, la Corre, le speranze, gli haueri, i suoi amoreuoli, e qualificati Padroni, e quanto di bene haueua accumulato per lo spatio di trent'anni nella medesima Città, dalla quale partitosi con quella afflizzone, che ognuno puole imaginarsi, andò à ricercare un Clima affatto ignoto, e straniero, oue non giungesse il ferore de' suoi vituperi, quantunque da esso, e dalla sua Casa non meritati.

Mà l'offesa di Guido procedendo da più acerbe, e più graui punture, internandosi nelle sue viscere come Marito, hebbe forza di eccitare lo sdrgno fino all'estremo, e considerando non esser sufficiente ripiego il punir se stesso con un voluntario esiglio per i delitti altrui, mentre dal mondo poteua essere giudicata una tal risoluzione, argomento evidente di debolezza, e viltà d'animo, e hauendo sicure notizie, che Pompilia sgrauatasi del mese di Decembre di un figlio maschio in casa del Compariui mandaro occultamente à balia, non solo manteneua l'infame corrispondenza col Canonico Caponsacchi, riceuuto (conforme è stato detto) per ospite nella fudetta casa, ma ancora, che più d'uno auoltoio si raggiraua intorno à quelle mura per giungere con augumento delle sue vergogne à mettere il rostro, e gl'artigli nella carne bramata, prouava gagliardissime commozioni nel sangue, che lo stimolauano ad appigliarsi à ogni più disperata risoluzione.

In-

Intanto volgendo , e riuolgendo quasi delirante i suoi funesti pensieri, sù i riflessi, che si trouava aborrito dagl'Amici, dis- cacciato da i parenti , e mostrato à dito da tutti nella sua Patria, e precorrendo la fama . che in Roma si vendea con mercato infame la sua riputazione , la qual cosa doppo la morte di Pompilia hà dato mortuo al Fiscale delle Conuer- tite di mandar precetti , e pigliar possesso , aggiungendosi i continui rimproveri , che riceueua dal perduto suo honore , ebro tutto di furie, si parti di Arezzo in compagnia della dif- perazione , e giunto in Roma , portatosi alla Casa , che era l'asilo de suoi vituperij, non potè dubitare quanto fosse in venerazione il solo nome dell'adultero , mentre fingendo di presentare vna lettera di sua commissione, le furono subito spalancate le Porte, e posto à pena il piede nella soglia, vide farsegli incòtro il suo disonore, che doue da lungi ne ri- ceueua solamente le impressioni in idea, allora baldanzoso e trionfante non hebbe timore di rinfacciarle con volto smas- cherato tutte l'ingiurie, che erano state commesse in quella Casa contro il suo decoro ; onde rimirando da per tutto in- crostate le mura de suoi grauissimi scorni , e delle sue infamie rotti gl'argini della ragione , precipitò nel miserabile eccidio d'immergersi con funesta catastrofe nel sangue degl'oppressori della sua reputazione.

Nè puol mettersi in dubbio, che il Franceschini habbia com- messo vn'eccesso da disperato , e che la mente sua furi- bonda fosse totalmente destituta dell'uso della ragione , mentre hauendo perduto la rossa, perduto la moglie , perduto l'onore , altro non li restaua , che perdere , se non miserabilmente la vita; perche, come dice, parlando di vn'huomo irato il dottiissimo naturale, e giurista Paolo Zaccaria nelle sue questioni Medicolegali lib.2. tit.1. quæst. 6. dopo il numero 16. *Eft enim impetus ille talis, ac tantus, ut omnino nibil ab insanis, & furore differre, apertissimè affirmauerit Galenus*, soggiungendo al num. 20. ciò che de iure è noto , che i delitti commessi in tale stato si puniscono con minor pena, ancorche si trattasse del delitto atrocissimo del parri- cido Calder. decis. crim. Catbalon. 43. num. 33. lib. 1. e molte altre cose al nostro proposito riferisce al num. 27. con i se- guenti, e queste propositioni di teorica si riconoscono à pna-
to

to in atto pratico verificate in Guido, poiche , come totalmente furioso , e priuo di senno , commise vn'attentato si grande in hora benche notturna,frequentata molto dal popolo, dopo di cui non curandosi di alcuna precauzione , ò circospezione , con la quale ogn'altro di mente sana hauerebbe procurato gouernarsi , si pose in viaggio per la strada maestra di settanta miglia in circa di confine senza preparazione di caualcature,come se fosse vn semplice viandante di ritorno di Roma,le quali circostanze come segni evidenti di mente offesa,e delirante,offerua il Calder. nella sopradetta decis. Catbalon.crim.43.num.35. verificandosi in quest'attenzione quello, che scriue San Geronimo nelle sue Epistole . *Vbi honor non est, ibi contemptus est : ibi contemptus, ibi frequens iniuria : vbi iniuria, ibi & indignatio : vbi indignatio, ibi quies nulla : vbi quies non est, ibi mens à proposito sepè detinatur.*

Nè in questo caso entra la distinzione legale , se dall'irato si commetta il delitto nel primo impeto dell'ira , ò pure con intervallo di tempo , perche questa distinzione potrebbe forsi hauer luogo , quando l'ira è nata da vn'ingiuria di fatto transitorio,e non permanente,mà quando come nel caso, di cui si tratta,l'ingiuria prouocatrice dell'ira,consiste in atti frequenti,e reiterati , cioè non tanto nel passaggio della Donna dal Conservatorio alla Casa di Pietro con vn vano, e ridicolo pretesto, mà di vantaggio nella permanenza in detta Casa con le circostanze aggrauanti d'infamia, come si è detto di sopra,allora , sicome l'ingiuria è permanente per li continui affronti,che l'ingiuriato riceue, così la vendetta s'intende presa in continentis, e senza alcuno intervallo, come i Signori Difensori della causa hanno iuſſiclientemente prouato nelle loro non meno erudite , che dotte scritture , con fortissimi argomenti,e insuperabili dottrine .

Nè vale il dire , che testi aggrauato il delitto per la qualità delle armi,perche,come dice Virgilio *furor arma ministrat*, nè per la squadriglia,ò vogliam dire conuenticola, nè per il luogo , ecceſſo , ò altre circostanze considerate dal fisco , perche in vn furioso tutto è ſcuſabile , eſſendo affioina , e principio certissimo , che *natura eo modo insurgit, ut à ſe depellat quocumque modo poteſt &c.* in conformità di quello

lo dice il Fracastoro seguitato dal Zaccaria loco citato n. 27., e in vero vn'animò ingenuo, e che fa stima del suo honore, e della sua riputazione, ogni qual volta resta offeso atrocemente in parte cotanto sensibile, e cotanto delicata, ogni qual volta giunge al termine del furore, e della disperazione, perduto ogni lume di ragione, come delirante, e frenetico, non puote appagarsi, nè meno se giungesse à sconvolgere, quando li fosse possibile, i Cardini dell'Vniuerso per annichilare non solamente gli Autori, ma ancora il luogo, e la memoria de suoi scorni, e de suoi vituperi, *quia zelus, & furor Viri non parcer in die vindictæ, nec acquiescer cuiusquam precibus, nec suscipiet pro redemptione donum plurium*, come parla in questo proposito lo Spirito Santo per bocca di Salomone nei Proverbi al 6. in fine; al che molto bene conferisce quello, che doctamente scriue San Bernardo in Epistol. ad Robert. *Nepot. suum in princip. Dolor quippe nimius non deliberat, non verecundatur, non consulit rationem, non metuit dignitatis damnum, legi non obtemperat, iudicio non acquiescit, modum ignorat, & ordinem.*

A tal segno non vi è dubbio, che giungessi Sansone, quando caddè in potestà de suoi Nemici. Soffrì con animo intrepido la priuazione degli occhi, e altre dolenti sciagure, mà quando si vide destinato à seruire di trastullo ne i luoghi publici, e che in quelli vduia le derisioni, e le beffe del Popolo, s'accese lo sdegno nel suo petto, con impeto tale, che tutto smanie, tutto furie moriatur, disse, *anima mea cum Philistin*, e data vna scossa alle Colonne, che sosteneuano il Palazzo, lo ridusse in ruina, *multaque plures interfecit moriens, quam viuens occiderat*, come riferisce il Sacro Testo; e Christo medesimo, ancorche fosse mansuetissimo, e hauesse somma sofferenza nel riceuere gli obbrobrii, e gli strapazzi senza mai lamentarsi, nientedimeno, quando si sentì toccato nell'honore, rispose *Honorem meum nemini dabo*; & è certo, che chiunque apprezza la reputazione, e l'honore, stima molto meno il morire huomo honorato sotto vna mannaia, che viuere per molti secoli infaccia al mondo con vergogna, e dishonore.

Questo

Questo argomento così forte ha procurato debilitare in fatto vn' accorto instigatore aderente al Fisco , hauendo procurato , che esca dalla doctissima penna di Monsignore Fiscale vn periodo , che dice : *Verum quia pro parte de Comparinis pretendebatur subministracionem alimentorum ad Franceschinum in Conseruatorio spectare , & pro parte Franceschini dicebatur ad Comparinum pertinere Illustrissimus , & Reuerendissimus D. Gubernator , habito prius consensu Abbatis Pauli germani fratris Guidonis , & Procuratoris in Causa , Domum de Comparinis eidem Franciscę protuto , & seculo Carcere sub fideiūssione assignauit ;* mà questo fatto si giustifica chiaramente , che non ha alcuna suffiſtanza .

Quando Francesca Pompilia dalle Carceri doueua condurſi al Conſeruatorio , fu richiesto l'Abbate Franceschini a prouederla degli alimenti , con protesta , che repugnando , farebbe comparsa persona terza , e ignota , che n'hauerebbe affunto il peso con suo dishonore , onde l'Abbate volendo dar fine vna volta alle occasioni di riceuere nuoue vergogne , e togliere ogni attacco di conſeruare ne meno vn minimo ſegno di attinenza con l'obbrobriofa Cognata , accettò il mezzo termine propofſoli con queſte circoſtanze , cioè che il Lamparelli come Procuratore della Carità ne hauesse fatto il prouedimento con lo ſborſo de propri danari per riualersene contro chi di ragione li competeua , ſicome poi fe ne rimborsò ſopra il danaro , che era ſtato trouato appreſſo la fuggitiua rubbaro al Marito , e nella di lei cattura poſto in deposito nell'Uffizio , oue ne reſtò anche tanto , che in fine d'ogni coſa fu confegnato il reſiduo al medefimo Abbatē .

Quando poi dal Conſeruatorio detta Francesca Pompilia fu traſportata alla Caſa di Pietro , e Violante , tutte le circoſtanze antecedenti , e ſuſſeguenti dimoſtrano per molto inueriſimile , che l'Abbate vi defſi il conſenſo , anzi che non trouandosi negli atti oue ſia registrato il detto conſenſo , appariſce chiaramente , che non foſſe dato , e ne meno poteuia legiſtimamente darlo , non eſſendo Procuratore del Fratello in queſto particolare , ſtante che il ſuo mandato ſi reſtrinqueua ſolamente alla facoltà di potere ricuperare il dana-

danaro , e altro , che stava in deposito nell'Uffizio , come questa giustificato negli atti , e dal racconto , che fece l'Abbate all' hora à suoi Amici , e conoscenti , si distrugge totalmente l' assertua del Fisco , mentre diceua essergli stato notificato , che la Giouane per necessità di purgarsi , in riguardo all' indisposizione testificata dal Medico , doueuauisse scire dal Conservatorio , e portarsi alla Casa paterna , al che parendoli d' esser burlato , rispose , che si poteua comodamente adempire la purga d' vna Donna nel Conservatorio , senza esporla à pericoli tanto evidenti di maggior vituperio , marauigliandosi molto , come in vn subito fosse ritornato l' affetto di Padre in Pietro Comparini verso Pomplilia , che tante volte l' haueua negata per figlia insieme con la Moglie , e come potessero i medesimi essere , e non essere Genitori di detta Donna , secondo i loro desideri in pregiudicio della Casa Franceschina .

E se bene l' iugatore , per colorire l' honestà di detta Donna , hâ mendicato diuerse giustificationi , è da notarsi , che in sostanza tutto quello , che si dice in questo proposito è fondato in ciò , che con la propria bocca in fauore di se stessa , e per discolpa de suoi mancamenti hâ proferito la Donna , tanto in questa congiuntura , quanto in quella della fuga , come nel Processo da riuedersi costando in fatto tutto il contrario , con aggiungerui le prove esteriori , che voleuano fare le Conuertite , dalle quali si astennero hauuta la notizia del Parto del figlio maschio ; e piacesse à Dio , che ella hauesse osservate le Leggi della santa honestà , che da suoi capricci non sarebbe succeduto eccidio così grande . Auvertendosi in oltre , che l' asserta dichiarazione fatta dalla Donna in articolo di morte puole essere equiuoca in se stessa con il senso , che doppo la Confessione , & Assoluzione Sacramentale resti cancellato il peccato , come se mai fosse stato commesso , in modo che in foro poli non habbia più bisogno di perdono ; onde da tutte le sopraccennate circostanze , e ragioni validissime , non vi è da dubitare , che il Franceschini sia meriteuole del compartimento , che danno le Leggi , per causa degli eccessi , che traggono l' origine da gli stimoli dell' honore ; e quando mai fossimo ne i termini , che questa causa douesse essere giudicata coll' expedite , dourebbe senza difficoltà

ficoltà essere punito leggiermente il Franceschini , per rintuzzare l'orgoglio all'Impudicitia, e alla Sfacciatagine, che come Donne non mancandogli seguaci , trionfano per tutta Roma,in compagnia del Tradimento,tanto in pubblico,quanto in privato , con oppressione , e derisione dei Mariti , che fanno stima della loro reputazione, dando titolo di *freddure* aile circospezioni,che si deuono hauere per la conseruazione del proprio Decoro .

S V M M A R I V M

Dic 12. Octobris 1697.

IN mei &c. D. Francisca Pompilia Vxor D. Guidi Franschini de Aretio in eius libertate posita &c. promisit &c. habere hanc Domum D. Petri q. Francisci Comparni &c. sitam in via Paulina pro tuto, & securro Carcere, & ab ea non discedere, neque de die, neque de nocte, etiam ianuis, & fenestris apertis, sub quoquis praetextu &c. etiam animo redeundi &c. & se presentare &c. postquam conualuerit, ac toties quoties &c. ad omne mandatum Illustrissimi, & Reuerendissimi Domini &c. Almæ Vrbis Gubernatoris pro causa de qua in actis &c. etiam nouis, vel non nouis superuenien. indicijs sub poena sc. tercentorum Reu. Cam. Apostolica applican. in casu &c.

Sequitur fideiussio in forma.

Charitas Notarius .

Fidem facio ego infra scriptus &c. qualiter in libro Baptizatorum fol. 152. reperitur infra scripta particula videlicet
Die 23. Iulij 1680. Ego Bartholomæus Minius Curatus Baptizau infantem natam 17. huius ex D. Petro Comparino &c. & ex D. Violante Peruzi Coniugibus degen. in hac Parochia, cui nomen impositum fuit Francisca, Camilla, Victoria, Angela, Pompilia &c. In quorum fidem &c. Roma hac die 9. Februario 1698.

Ita est Petrus Ottobonus Curatus S. Laurentij in Lucina .

Cari miei Genitori .

Vi fo sapere, come io sono qui in Castel nouo carcerata per esser fuggita con vn Signore, che voi non conoscete, ma è Parente del Belichini, che fù à Roma, che haueuo à venire con lui, ma per essere ammalato non bâ potuto venire, ma c' venuto quest'altro, & io sono venuta con questo, perche

Num. 1.
Obligatio emissâ à Francisca Pompilia de habendo Domum pro carcere.

Num. 2.
Fides Baptismi Francisca Pompilia.

Num. 3.
Epistola Francisca Pompilia scripta in Carceribus Castri noui suis Genitoribus.

*la mia vita era a bare , perche Guido mio Marito mi voleua
uccidere , perche baueua certi suoi sospetti non veri , e per que-
sto mi voleua uccidere , & Io vi mandai quelli apposta , e
voi non credeui , che fosse mia mano quelle lettere , che
vi mandai , ma vi dico , che lo hò finito d'imparare di scri-
uere in Arezzo , però vi dico , che questo , che ve la porta
s'è mosso a pietà , e mi ha dato la carta , e quello mi ha bi-
sognato , però voi subito , che hauete letto questa mia , ve-
nите qui in Castel nouo per darmi qualche aiuto , che mio
Marito mi fa contro , quanto puole , però se voi volete la
vostra figliola , venite subito , e resto perche non hò più
tempo li 3. Maggio .*

Foris -- Al Sig. Pietro Comparini mio Padre alla strada
Vittoria . Roma .

Num.4.

*Alia Epistola eius-
dem in qua obiur-
gatur Canonicus de
i honestate.*

Rendo infinite grazie dell'ottaue , che mi hauete date , qua-
li sono tutte al contrario della Rosalinda , che tanq è ho-
nesta quella , tanto e lasciu questa , e mi marauiglio , che
voi che siete tanto casto , hauete compuste , o copiate cose tanto
poco oneste &c. ma io non vorrei , che voi faceste così in ogni
cosa , come hauete fatto in questi libri , che il primo è stato tan-
to onesto , e queste ottaue tutte il contrario , che voi da tanto
onesto , che fete , dinentasse tanto ardito , il che non credo &c.

Num.5.

*Partitura Testa-
menti Petri Com-
parini .*

In tutti , e singoli miei beni &c. mia Erede vsufruttuaria-
stituisco la Signora Violante Peruzzi mia Consorte &c.
E morendo detta Signora Violante sostituisco nel detto
usufrutto della mia vniuersale Fredità Francesca Pompi-
lia moglie del Sig. Guido Franceschini d'Arezzo , e que-
sta sostituzione la faccio per li suoi buoni costumi , e per
hauer'essa vissuto in buona fede per molto tempo , & anni
d'esser mia figliola , si come della Signora Violante mia
Consorte , & io d'essergli Padre , ritrouandosi tanto essa
medesima , come lo in tal credulità ingannati , mercè al-
la vanità de pensieri malamente esaminati dalla detta mia
Consorte con hauermi supposto il Parto della medema ,
e da detta Signora Violante mia Consorte per scrupolo di
coscienza scopertomi dopo il Maritaggio di Francesca
Pom-

Pompilia medesima , e da me riconosciuto esser vero Parto supposto con le notizie prefene da persone d'integra fedc . Con conditione però , che detta Francesca Pompili debba ripatriare , e dimorare in Roma sua Patria &c. nella quale Città spero viuera castamente , & onestamente , e da buona Crißiana , e non ripatriando , o ripatriando viaendo con sfacciata impudicitia (che Dio non permetta) voglio , che decada dall'usufrutto di detta mia Eredità , e sia fatto luogo alla sostituzione a favore dell'infraferito mio Erede proprietario &c. perche così &c. e non altrimenti &c. E perche potrebbe darsi il caso , che rimanesse Vedova , o si dissolvesse il Matrimonio , stante la lite , che verte auanti Monsignor Illustrissimo Tomati per l'atti dell' Oliuieri della sua filiatione , però volendo detta Francesca Pompilia rimaritarsi , o farsi Monaca , in tali casi , o cafo , voglio , che si possa smembrare dalla mia Eredità fino alla somma di scudi mille moneta ad effetto , che si possa rimaritare , o monacare , se gli piacerà , insinuandola non rimaritarsè per non soggiacere al secondo , o ad altri inganni , dandoli in oltre facoltà di poter testare fino alla somma d'altri sc.ducento moneta della mia Eredità , & in euento , che premorisse detto Sig. Guido alla detta Francesca Pompilia &c. per il che ne venisse la restituzione del denaro da esso Sig. Guido riceuuti in somma di sc.settecento in circa &c. che lo stimo se non impossibile almeno difficilissimo per esser detto Sig. Guido miserabilissimo , e la sua Casa assai pouera , voglio non gli si computino alla detta Francesca Pompilia nelli detti sc. 1000. , ne tampoco nella facoltà di testare perche così &c.

Num. 6.

Mandatum procuratum à D.Guidone Franceschino in personā D.Abb. Paulieius fratribus .

Die 7. Octobris 1694. D. Guidus q. Thomae de Franceschini de Aretio sponte &c. fecit , & constituit &c. eius verum &c. Procuratorem &c. specialem , & generalem &c. ita tamen &c. D. Abb. Paulum de Franceschini eius geranum fratrem Romæ degentem &c. ad eius , & nomine dicti D. Constituentis , & pro eo agendum , & defendendum omnes lites , & causas ciuiles , & mixtas motas , & mouendas qualibet de causa , & contra quoscunque vbi que locorum , & signantur Romæ tam actiue , quam passiuè coram

coram quocunque D. Iudice tam Ecclesiastico , quam
seculari , Congregatione , seu Tribnnali , & coram eo , vel
eis libellum dandum , excipiendum , litem contestandum ,
iurandum de calunnia , & quodlibet aliud licitum Iura-
mentum præstandum &c. ac omnia , & singula alia acta
opportuna , & necessaria gerendum , & procurandum eo
modo , & forma , & prout facere posset d. Constituens , si
præsens esset , & dicto Procuratori &c. liberè videbitur , &
placebit &c. promittens &c. rogans &c.

Ego Ioseph &c. de Riccij Notarius publicus &c. Arc-
tinus rogatus &c. in fidem &c.

Illustriſi. & Reuerendiss. D.

Vrbis

G V B E R N A T O R E

In Criminalibus .

Romana Homicidiorum .
cum qualitate .

P R O

Fisco .

C O N T R A

D. Guidum Franceschinum , & Socios .

Summarium.

ROMÆ , Typis R. Cam. Apost. 1698.

Romana Excidij.

III. me & Reu. me Dñe. A D quid tempus tere-
articuli , an Adulterium , quòd prætenditur exaduerso Com-
missum à Francisca de Comparinis cùm Canonico Caponsac-
ca sit sufficienter iustificarum , dum nos in prima nostra facti ,
& Iuris informatione diximus resolutum solum fuisse in Con-
gregatione pò poena Relegationis in Ciuitate Vetus aduer-
sus præfatuin Canonicum , & retentionis in Conservatorio
eiusdem Franciscæ ob defecum probationis dicti Adulterij ,
& Iure merito , quia nec ipse Canonicus nèc dicta Francisca
sunt confessi , minusquè convicti , & quia præsumptiones ex-
aduerso desumptæ sunt leues , ac equiuocæ ; quamuis etiam
si essent graves atquè urgentissimæ non sufficerent ad consti-
tuendam Concludentem probationem , sed ad summam in-
ducere possent animum ludicis ad aliquam poenam leuem , ac
arbitriam imponendam , vt testatur Farinacc , de Communi
DD. opinione quest. 136. num. 24.

Strictè ideò insistendum solum venit pò parte Fisci non licuisse
Guidoni Franceschino vxorem non depñhensam in Adulte-
rio , ac in actibus venereis , & ex interallo occidere absquè
incursu poenæ ordinariae l. Cornel. de Sicar. procul Maritum
occidentem vxorem ex interallo à dicta poena non excusari
probauius ex multorum insignium DD. auctoritate in priori-
bus scriptis S. Aly verò .

Quo iacto fundamento diximus Iura Fisci controuerti minimè
posse in Casu , qd quo agitur , dñm DD. exaduerso allegati ex-
cusantes à pñna ordinaria Maritum loquuntur in Casu sim-
pli , qui proindè extendi non debent ad Casum qualitatibus ,
ac circumstantijs valdè grauatum , ea ratione , quia non po-
test eadem esse poena , quando maius deliqsum est in uno Ca-
su , quam in alio iuxta Text. in l. final. ff. de Calumniat. Bald in
l. cùm proponas num. 12. Cod. de Nautico fanore , quòd in nostris
præcisis terminis etiàm comprobauius auctoritate Laurent.
Maib. u de re Criminal. controuers. 12. num. 29. vers. Ex qui-
bus .

Nèc ad posternendum hoc Fisci fundamentum obijci valet , quod
omnes qualitates , & circumstantiæ , quæ pro parte eiusdem

A Fisci

Fisci cumulatæ fuerunt tanquam tendentes, & præordinatae ad finem in mente propositum non sunt habendæ in consideratione cum finis, & intentio d. Guidonis Franceschini tendet ad occidendum vxorem, & ad vindicandum eius honorem, quia quantum fallax sit hoc argumentum satis comprehendi potest ex iam scriptis per nos in §. Prima enim cum §. seq. & in §. secunda qualitas, cum § si ergo, ubi probavimus, quod auctoritates Doctor. qui possent exaduerso adduci loquuntur, & intelligi debent, quando finis est licitus, nec a lege prohibitus, vel quando per particulares Constitutiones, ac Bannimenta qualitas, ac circumstantia non constituant delictum capitale prorsus distinctum, & separatum, siue sequatur, siue non sequatur id quod fuit in mente delinqüentis præordinatum.

In nostro casu ex concessis per DD. meos Defensores non est licitum, nec a iure permisum marito impunè vxorem pro Adulterio ex intervallo occidere, sed solum a iure eidem permittitur Adulterom vitem, & Adulteram uxorem in Adulterio deprehensam morti tradere; quomodo ergo applicandæ sunt nostro casui DD. auctoritates, quæ procedunt, & sibi locum vindicant in casu a iure permisso, in quibus terminis loquitur Laurent. Maisben exaduerso allegatus contr. 11, ubi in figuratione casus legitur Adulterum, & Adulteram fuisse morti traditos in domo marisi, quamvis in illo casu maritus, non impunitus evaserit, eo quia usus fuerit armis igneis.

Neque substitit in iure, & in praxi, quod delatio armorum confundatur cum delicto patrato, Non in iure, vt iam firmavimus in alia §. si ergo, vers. Certius, nec in praxi, quia in omniibus tribunalibus totius status Ecclesiastici seruat, quod secuto homicidio etiam rixoso si illud fuerit comissum cum armis deferti prohibitis sub poena capitali, præser-tim si dicta arma ad manus Curia peruenient accipitur pena maior, & homicida qui ob homicidium rixosum in penam extraordinariam damnari deberet in penam ordinariam ob dictam armorum delationem damnatur, prout de hac praxi in statu Ecclesiastico vigore Bannimentorum testatur Farinac, quæst. 108. num. 168. & seqq. Guazzin. defens. 29. num. 18. vers. qua opinio.

Minus applicantur cæteræ Doct. auctoritates adductæ ad elenditam dispositionem Constitutionis Alexandrinæ, quia licet

c t ver m sit , quod ad hoc ut intret poena ab ipsa conflica-
tione comminata debeant tria concurtere , nemp  dolus cau-
sa litis , & quod nulla interuenierit prouocatio , ut tradit *Far-
rinac.* in *conf. 67. num. 1.* ceterique ab eo citati , attamen in
n stro casu pr dicta omnia concurrunt; de dolo enim dubit 
ri minim  potest , dum ex propria confessione Reorum ha-
bemus pr cedentem tractatum , & deliberationem homici-
dia committendi , ex quo tractatu pr cedenti dolum oris
firmant *Decian. conf. 32. num. 15. lib. 3. Mastard de Probat. lib. 1.*
*conclus. 5 31. num. 73. & seq. Menoch. de presumpsi. lib. 5. pra-
sumpt. 3. num. 110. Farinac. qu . 89. inspect. 4. num. 97.*

De Causa litis pariter non est ambigendum , quia ob pr tentio 
Petri de Compatriis super dote promissa , quoad Bona fidei
commisso subiecta ad exclusionem dd. Guidonis Franceschini
& Francisc  eius Vxoris , non solum inchoatum fuit lu-
dicium , coram A.C. Thomato , sed etiam ab ipsomet ludoce
fuit prolat  Sententia favorabilis eidem Franceschino .

Quod autem prouocatio ex qua motus fuerit Franceschinus ad
occidendum propriam vxorem processerit ex Causa pr ten-
ti Adulterij habemus ex confessione ipsiusmet Franceschini
super qua Domini mei Defensores principaliter insistunt
quam Causam cum negare minim  possint fuisse introductam
Criminaliter coram Iudice ab eodem metu Francischino , tate-
ri pernecesse oportet sibi locum vindicare Bull  Alexander-
ii dispositionem , qu  loquitur t m de Causis Ciuitibus ,
quam Criminalibus , ut videre est in § Quarto eiusdem Bull ,
ibi -- *Quod deinceps perpetuis futuris temporibus , omnes , & sin-
gula Ecclesiastica , Secularesq; persona cuiuscumque qualitatis , di-
gnitatis , status , gradus , ordinis , & pr minentia fuerint , que
earum in Causis , t m Beneficialibus , quam profanis , ac Crimina-
libus , siue mixtis in dicta Curia nunc , & pr  tempore pendentibus
Aduersarios , vel illas prosequentes , & procurantes , siue Aduoca-
tos , aut Procuratores ipsorum &c. & ibi -- si mutilatio membra ,
vel mors , qu  Dens auertat subsequatur ; ultra Cause , & Iu-
ris omissionem lesa Maiestatis Criminis sentenias incurvant
ipso facto .*

Et h c currenti calamo propter angustiam temporis trium ho-
tarum exarata sufficere credimus ad clarius demonstrandum
fun-

**Fundamenta Fisci in prioribus scriptis firmata subtiliter non
obstantibus exaduerso latè, & crudite, sine tamen legitima
probatione deducetis,
Quare &c,**

F de Gambis Fisci, & R. C. A. Proc. Generalis.

*Illustriſſ. & Reuerendiss. Dno
Vrbis*

G V B E R N A T O R E

In Criminalibus.

Romana Excidij.

P R O

Fisco.

C O N T R A

**D. Guidonem Francischinum, & Socios
Carceratos.**

**Responsio Dni Procuratoris Fiscalis
Generalis.**

ROMÆ, Typis R. Cam. Apost. 1698.

Romana Homicidiorum.

III.^{me}, & Reu.^{me} Dñe. R Edarguit D. meus
Pauperum Ad-
vocatus in principio suæ nouæ Informationis Decretum huius
supremi Tribunalis super Tormento Vigilæ D. Guidoni Fran-
ceschino, & locis inferendo pro habenda confessione imma-
nissimi sceleris ab ipsis patrati tanquam iniustum, exindeque
confessiones illius metu emanatas, & eo cessante ratificatas, ut
moris est, eisdem nocere non posse infert; Iniustitiam vero
dicti Decreti desunere conatur nedum ex defectu qualitatis
atrocissimæ per constitutionem vel rec. Pauli V. super refor-
matione Tribunalium Verbis requisitæ, sed etiam ex quo non
posset irrogari poena mortis pro Crimine, de quo agitur, &
ita nec etiam ex facultatibus extraordinarijs huic Tribunali
concessis decerni Tormentum vigilæ, ne maior sit asperitas
in procedendo, quam in condemnando, ut monet D. Cano-
nicus Raynald. obseruat. pars. I. cap. 5. §. I. ad tertium num. 12.
& seq.

In fine vero dictæ nouæ informationis me quoque redarguit, eo
quod cum summa ipsius, & aliorum admiratione mei mun-
eris obligationi, veritatem scilicet quæreadi, defecerim, con-
ficiendo allegationes prout tuendis iuribus Fisci eidem non
communicatas, de quo satis ipsum ore tendens conquersum
existinabam, ut nouæ quærelæ parcere potuisset, cum meum
non sit illas communicare, prout mihi nunquam ab eodem,
quas ad defensam conficit, doctissimæ demore informationes
communes sunt; Quod solum innuere operæ pretium duxi,
ne meo muneri, & obseruantæ, qua Dominum meum pro-
sequor, defecisse videar.

Præmissa propteræ propria apologia, transeo ad vindicandum
ab obiecta iniustitia decretum huius Tribunalis, & omis-
sa indagine qualitatis Criminis: An scilicet reputari valeat atrocissimum,
de quo ad abundantiam differui in præterita res-
ponso. Sed quatenus etiam cum sequentia ostendendo eam
substineri posse ob qualitates illud exasperantes, & extollen-
tes ad læsæ maiestatis delictum, ex dispositione Constitutionum
Apostolicarum, & Generalium Bannimentorum, satis
esse censeo in præsenti ostendere, quod pro illo poena mor-
tis

A

tis sit interroganda , quod facili negocio euincere spero , dum ex ipsa iam decreta per integrerrimos Iudices acerbioris Torturæ specie , dicitur quoque pœna locum esse præsupponendum est , itaut cum nihil nouit tam in facto , quam in iure deducatur , quod non fuerit prius in relatione Causæ pro decerpnda Tortura examinatum , superuenient Reorum confessione Iudicium partes sim executionem pœnae promeritæ ab omnibus iam diu expectata pronunciare .

Digitum noui afferri per DD. Defensores , cum præcipius eorum conatus consistat in repetenda causa honoris ob præsum adulterium patratum ab Vxore D. Guidonis , conspiratis , & adiuuantibus eius Genitoribus barbarè cum ipsa trucidatis ad excitandam Illustrissimi Domini mei , ac DD. Iudicium commiserationem , ut mitius tam ipse , quam Socij puniendi sint , ex auctoritatibus pro eo adductis in prima informatione S. Hoc stante cum seq. & S. Prædictis nullatenus pariter cum seq. & in praesenti S. Verum , & socios ; sed eadem recurrit responsio , quod nullum Reis præsidium afferre valet exceptio prætentæ causæ hogoris ob eius insubstantiam in facto , & irreleviantiam in iure .

Quid quid enim sit an ad excusandam vindictam incontinenti sumpram à viro contra Vxorem , vel Amasiæ , sola vehemens suspicio adulterij sufficiat ex quo illa reperta sit in actibus Venereis vel præparatorijs ad illud , quia tunc ob inconsultum dolorem ad itam prouocantem ab illa excitatum , pena plurimum est temperanda iuxta qualitatem casus atque personarum , certum est , quod ad effetum vitandi pœnam ordinariam legis Cornelij de Sicar. pro necesse Vxoris ex intervallo patrata , sola suspicio quantumcunque vehemens non sufficit , sed requiritur eius liquidissima probatio , vel ex confessione ipsius Vxoris , vel sententia condemnatoria resulans , ut præter adductos in mea præterita responsione S. Solamque suspicionem , admittunt per Dominos Defensores laudati Mascard. de probas. tom. 1. concl. 64. verb. Adulterium num. 8. et 9. Bertazzel. conf. 42. num. 1. vers. Quod autem , Caball. resol. Crim. cas. 300. num. 26. Matib. Sanz. de re Crim. contr. 12. numer. 15. Dexart. decis. Sard. 3. pariter num. 15.

Talis autem probatio deficit omnino in casu nostro ; Nam in factu Vxor Adulterium usque ad extreum vitæ spiritum constantissime negavit , ut constat ex attestacionibus iuratis Religio-

ligiosorum Virorum, & aliorum, qui eidem lethaliter vulnerat ministrabant, vnamimter afferentium, ipsam semper affirmasse, quod nunquam Coniugalem fidem violauerat, nec tale peccatum sibi à Divina Clementia remitti exposcebat, quæ profectò assertio plurimi facienda est, cum nemo descendere presumatur immemor salutis æternæ, ut ultra relatos in præterita informatione §. Omneque: tradunt Menoch. de*s* presump*t*.lib.5. presum*s*.numer.3. Farin. de heret*is* qua*s*. 196. num.31. Decian. tract Crim.lib.5.tit.de defens.Rer cap.37.num. 27. Card. de Luc. de Regal. disc.119. num.24. & de legat. disc.27. num.10.

Non relevantibus responcionibus traditis per DD. Defensores, quod scilicet huiusmodi probatio exclusiva adulterij solùm desumatur ex fidibus extraiudicialibus, lité pendente extortis ab herede pro remouendis molestijs illatis à Monasterio Conuertitarum, & quod aliqui subscripti in iisdem sint legatarii; Cumque talis assertio tendat ad regendam propriam turpitudinem non sit attendenda; Præsertim cum non sit iurata, & licet nemo presumatur immemor salutis æternæ, non tamen omnes presumuntur esse immunes à peccato, sicut S. Ioannes Baptista, & maxime quoties agitur de praividio Tertiij, & de gravius inimicum declaraneis pusiendo.

Quoniam omnes facili negocio disoluuntur; Informitas quippe probationis obstat posset, si Fiscus teneretur eam assumere, & perfectam exhibere; At cum talonus Reo incumbat ex supra traditis pro vitanda pena mortis, quoties Vxor ex intervallo necauit, & tales attestaciones solùm adducantur ad offuscandum probationem pretensi adulterij per illum adductam, in hoc certè casu spernendæ non sunt, præsertim accentu qualitate attestantium, cum sint Religiosi nocte probitatis, quos, credibile non est, mentiri voluisse, ut per Text. in cap. Si Testes 4. qua*s*.3. cap. In nostra de Testib. tradunt Alex. conf.43. num.4.vol.7. Crauett. conf.267. num.2.vol.1. Menoch. conf.221. num.3.lib.3. Farinac. de Testib. qua*s*.70. numero 471. Bellis. disquis. Clericis. part.1. sis. de Clerico Teste §. 1. num.1., & seq.

Eademque replicatione tollitur exceptio, quod extortæ fuerint per heredem, litépendente pro remouendis molestijs illatis à Monasterio Conuertitarum, quia cum agatur de probandis assertione emissa in ultimis diebus vite atque in articulo mor-

A 2 tis,

tis, non poterat, nisi ea secuta, institui probatio, & laudan-
dus est heres, qui tenebat necem defuncti vindicare, nè in-
dignus reputetur, ut per Text.literalem in leg. 1.C.de ys, quibus
ut indignis ibi -- H̄eredes, quos necem Testatoris inulta nō
omisſe coſtiterit, fructus integrōs cogantur reddere &c. mo-
nent Angel. ibidem num. 2. Bartol. num. 1. & 5. Caſſren. numer. 1.
Iaſon. num. 1. Si dictas attestationes procuravit, vt saltem fa-
mam Testatrixis tueatur, quō potius tendebat eius studium,
quād ad arcendas molestias indebet illatas, & quarum ipia
cessatio retorqueri potest ad exclusionem prætentæ probatio-
nis inhonestatis infelicitis Vxoris.

Minusque obſtare valet, quod aliqui ex subscriptis ſint legata-
rii, cum eorum intereſſe non ſit adeò coſiderabile, vt a te-
ſtimonio terendo repellantur, ve monent Herculani. in tract.
de negat. num. 215. Lamberteng. de contract. gloſ. 10. num. 4.
Boff. in tit. de oppoſit. contr. Test. num. 123. & ſeqq. Maſcard.
deprobat. lib. 1. concl. 318. num. 4. & lib. 3. concl. 1357. n. 69.
& ſeqq. Oſafib. dec. 5. Pedemont. 99. num. 13. & 38. Præterim
quoties agitur deprobanda te, quæ contigit intra domesti-
cos parietes, & cuius propterā probatio difficultima repu-
tatur, vt aduertit Alex. conf. 64. numero 1. lib. 1. Farinac. de
Test. qu. 6. num. 58. & ſeqq. cum ibi adductis Talisque excep-
tio, quatenus ſubſteret, ſuppleta remaneret ex numero
aliorum Testium in dd. attestationibus ſubſcriptorum, ve
tradunt Angel. in L. qui Testamento num. 3. ff. de Testam. Cam-
peg. de Testib. regul. 75. in prima fallen. Farinac. dict. qu. 70.
num. 63. Rot. coram Rayas dec. 353. num. 5. & 6. & dec. 466.
num. 8. & coram Burau. dec. 143. numero 38. & coram Merlin.
dec. 277. num. 11.

Exceptio verò quod assertio morientis, ve potē tendens ad pro-
priam exonerationem non ſit attendenda, quia nemo cogit
propriam turpitudinem detegere, forſan procedere poſſet si
probatum fuſſet Adulterium, & non conſtituit, vulneratam
obiſſe cum maxima Christianæ compunctionis manifeſtatio-
ne, que mendacijs luſpicionem excluderet, quo caſu ea non
procedit, ſed iuccedit alia validissima præſumptio, quod ne-
mo credatur, velle mori ſalutis xterna immemor, vt monet
Maſcard ex aduerso adductus de probat. conclus. 144. num. 2.
vbi responderet Baldo in contrarium pariter allato in Tit. De
pace conſtantia verbo Vaffalli in vſib. feud. afferentis quid non
om-

omnis, qui moritur, est S. Ioannes Euangelista ostendendo, quod ipse est sibi contrarius, dum in conf. 25. lib. 1. ait, confessionem, emissam in articulo mortis valere, subditque, id ad veritatem proprius accedere, adducendo in comprobacionem. Marsil. conf. 5. numero 14. & 15. lib. 1. & Anch. conf. 15 1. affirmantem, ut si quis affereret, constitutum in articulo mortis mentiri, diceret non verisimile, & concludit, hanc opinionem esse magisquam, & rationi, ac luci naturali magis consequaneam, & licet aliquas afferat limitaciones, nulla tamen casui nostro adaptatur, & quæstio, de qua iple agit, procedit in assertione vulnerati, an faciat indicium contra inculpatum, quæ roto cœlo a nostra disputatione distat, cum ut obseruatum est, Filio non incumbat onus probandi, nec assertio nostræ morientis principaliter tendat ad vindictam, cum ex dd. arrestationibus constet, ipsam ab eadem abhorruisse, ut semper profiteretur se libentissime viro parcere.

His potius ad abundantiam, quam pro afferenda iustitia decreti huius Tribunalis, necessitate exposcente prænotaris, facile erit prætensi Adulterij probationem per DD. Defensores adductam elidere: Nam quatenus ea desumitur ex alio Decreto eiusdem Tribunalis condemnatorio D. Canonici Capponiacchi pro fuga, & cognitione carnali Franciscæ Pompiliæ, subsistit responsio tradita, quod non sit attendendus Titulus, sed probatio ex Processu resultans, & pena per sententiam imposta. Adeoque licet in Decreto, vna cum titolo complicitatis in fuga, & deviationis d. Franciscæ Pompiliæ additus fuerit etiam Titulus cognitionis carnis eiusdem; Attamen dum in Processu non reperitur probatio illius verificativa, eique pena triennalis relegationis non correspontet, remanet proprieà nudus Titulus non attendendus ex auctoritatibus adductis in præterita responsione S. non relevante.

Eoque minus ex illo resultare valet probatio, adeò clara prætensi Adulterij, prout requiritur ad euadendam poenam ordinariam pro vindicta ex intervallo sumpta, dum ad instantiam D. Procuratoris Charitatis fuit per DD. Iudices, approbante Illustrissimo D. meo, decreta correctio, subrogando generalem Titulum ad Processum relatiuum, scilicet: *Pro causa, de qua in actis: quæ correctio, licet non legatur in liberculo, in quo adnotantur resolutiones vulgo Vacchetta,*

tamen facta fuit in schedula transmissionis ad relegationem ,
& in decreto assignationis Domus loco carceris Summ. n. 1.
qua cum facta sit de consensu D. Abbatis Pauli Franceschini
eisdem propter ea innotuisse d. mutationem, affirmandum est
ob notoriam illius sollicitudinem in huiusmodi Causa pro-
mouenda, itaut prorsus inuerisimile sit , ipsum non perlu-
strasse tale decretum, & obligationem factam a Petro, sub-
ministrandi alimenta, absque spe illa repetendi , ac fideiul-
sionem praetitam de habendo domum pro carcere , ex qui-
bus scientia eiusdem sufficienter probata censeri debet , ve
firmavit Rot. coram Bich. decis. 30. num. 30. & seqq. & coram
Cels. dec. 152. num. 6. & coram Cerr. dec. 34. num. 40. & coram
fa. mem. Alex. VIII. dec. 269. num. 11. & dec. 398. num. 11.
par. 18. rec.

Exindeque corruit responso , quod nos potuisset mutari De-
creterum, utraque Parte non audita; Quia multò minus inau-
dita Francilca Potopilia, quæ suas adhuc defensiones non
conferat , poterat in condemnatione D. Canonici admi-
sceri titulus cognitionis Carnalis ei adeo præjudicialis, ne-
dum quoad existimationem , sed etiam quoad amissionem
dotis, cui præcipue maritus inhibebat, ita enim indefesa mu-
lier condemnationem passa fuisset, & quod peius est, ostendit
eventus, exposita remanebat furori viri . Ac proinde
talis correctio, iustitia dictante, merito impetrata , & execu-
tioni demandata fuit, & quatenus etiam non contigisset, non
poterat sententia contra D. Canonicum lata eidem nocere,
tanquam res inter alios acta, ut per Text. in L. De unoquo-
que, & in L. sep. ff. de re indic. firmavit Rot. coram Duxoz.
lun. dec. 797. num. 4. & in rec. dec. 392. num. 5. par 18.

Quod autem mutatio per relationem ad acta idem importet, ac
expressio tituli cognitionis carnalis, gratis omnino asseritur;
cum enim plures tituli prius in decreto condemnationis ex-
pressi fuissent, scilicet complicitas in fuga, deviatio , & co-
guitio carnalis , super quibus constructus fuerat Processus ,
expressio causa in eo contenta non est potius de sua, quam
de alia verificabilis, & certè non de omnibus, quia si voluis-
sent omnes in Decreto reformatio comprehendendi, dictum
fuisset -- Pro causis, de quibus in Processu , cum numerus En-
gularis pluribus non conueniat, ut tradunt Surd. conf. 396.
num. 9. lib. 3. Palm. Nep. alleg. 120. num. 6. lib. 3. Rosa coram
Greg.

Grig. dec. 433. num. 7. & in rec. dec. 252. num. 10. par. 19. Sed quia in Processu non erat verificata causa cognitionis carna- lis, vel pro illa damnati non poterat D. Canonicus, inaudita, & indefensa Francisea Pompilia proprie indiuiduatatem cri- minis Adulterij, quod non patitur scissuram per condemnationem vnius causa penderet quoad alium, & præsertim dum omnes sunt præsentes, & in carceribus constituti, ut moquet Text. in L. denunciasse S. fin. ff. de Adulter. Alberic. ibid. S. quaritur num. 6. vers. sed responderi potest ff. ad leg. Iul. de Adulter. Salices. in L. Reos num. 1. vers. Hic vero, & num. 3. vers. Item prodest Cod. codem titulo, Ciriaco. contr. 354. num. 21. Cranes. conf. 206. num. 2. Origlia ad Campan. obseru. ad resol. 24. & 25. num. 56. & seq. expressio proprietate Cau- sae, de qua in Processu, solum intelligi debet de complicitate in fuga, & deuiatione, qua poterat expediti, absque con- demnatione Franciscæ Pompiliz, non autem de complicitate carnali, cu[m] relatio facta sit ad ea tantum, quibus dispositio relativa congruit, ut firmant Cranes. conf. 548. n. 21. Surd. conf. 431. num. 64. Menoch. conf. 420. num. 78. & conf. 399. num. 48. Altegrad conf. 48. num. 38. lib. 1. Rocc. disput. Iur. select. cap. 42. num. 40. Rosa dec. 238. num. 4. par. 3. rec.

Idque manifustum redditur ex leuitate poenæ, ad quam damna- tus fuit D. Canonicus, scilicet triennalis relegationis, quæ certè non correspontet deuiationi mulieris nuptæ a Dom o viris eiusque traditioni ad urbem, & carnali cognitioni, quoniam circumscripta etiam qualitate Raptrus capitali poena puniendi, nisi ageretur de persona Ecclesiastica, pro solo Adulterio longè gravior infligenda fuisset, si eius probatio ex Processu resultaret, ut ex Text. in cap. si quis Clericus dist. 81. tradunt Abb. in cap. vi Clericorum num. 8. de vita, & ho- nestate Cleric. Menoch. de arbitr. cas. 419. num. 60. Diaz. in prax. crim. canon. cap. 87. Decian. tractat. crimi. lib. 6. cap. 23. num. 14. Belleri. disquis. Cleric. par. 2. S. 7. num. 3.

Agnoscit D. meus Pauperum Aduocatus, nimis imparem esse poenam delicto acerrimè expiando, & præsertim post renou- vatam Sixtinam Constitutionem a sa. me. Innoc. XI. ac pro- pretè ad evitandum defectum probationis eiusdem ex leui- tate poenæ luce optimo arguendum, respondere conatur, quod mitius actum fuerit, cum D. Canonicus, quia ipse erat forensis, & agebatur de delicto commisso extra Statutum Ec-

eclesiasticum, quo casu cum solo exilio dimittendus erat, sed responso ex pluribus insubstiens detegitur,

Primo quia ex notorio privilegio urbis Romæ, quæ Patria communis est, possunt in ea puniri etiam iij, qui extra statum Ecclesiasticum Pontificis potestati seculari subiectum deliquerunt, & quidem non pro sola contrectatione, quod cuilibet Principi licet, sed pro ipsis delictis, ut ex *Text. in l. Romæ ff. ad municipal. in terminis firmans Oldrad. conf. 124. per totum Marsili. conf. 99. num. 21. Petr. Barbos. in Tit. de Iud. ad L. secundam S. legatis num. 18. &c. seqq. Caius. de Imper. qu. 77. num. 7. & 8. Boff. in tit. de for. competen. num. 75. Cyrill. in Sum. crim. tit. vbi de crimin. agi opere. num. 18. vbi testatur, se ita seruasse de anno 1540. in foro Capitulino, Farinac. de Inquisit. qu. 7. num. 12. vers. hac questio, vbi quod in hac eadem Curia de anno 1580. fuit ad tritemes condemnatus Georgius Corso, qui Florentiæ homicidium commiserat, & ablatio equo occiso, Romanum venerat, non obstante, quod acerrime causa pro Reo fuerit defensa, Boer. dec. 29. n. 7.*

Secundum quod id fortius procedit, quoties agitur depuniendis delictis patratis a personis Ecclesiasticis, quæ Summi Pontificis iurisdictioni subiacent, & possunt in urbe de illis pena ordinaria puniri, licet extra ditionem temporalem commissa sint, ut aduentunt Barbos, citato Tit. de Iudic. ad L. secundam S. legatis num. 33. & seqq. Fagnan. in cap. licet num. 21. de for. competen. ibi -- Roma enim communis est Patria, & idem in Romana Curia quilibet Clericus, vel Laicus conveniri potest, licet ibi non delinquas &c. Farinac. citata qu. 7. sub num. 12.

Tertio quod cum accessus ad urbem, & traductio uxoris ad eamdem facta prætendetur libidinis causa, & pro maiori facilitate eam carnaliter cognoscendi, illam subtrahendo a Domo viri, utique ex tali destinatione D. Canonicus se subiecisset pronis, quæ delictum expiare possent, etiam in Urbe interrogandis, sicut eisdem obnoxius remanet tractans in illa delictum, quamvis extra statum perficiendum, ut tradunt Alciat. conf. 13. lib. 7. Clar. in præt. crim. qu. 38. & quest. 39. Caball. refol. crim. eas. 3. num. 7. & seqq. vbi quod attribuendum iurisdictionem Iudici pro delictis commissis, attenditur potius persona offendens, quam offensa, Pax Lord. elucubi canon. vol. 3. lib. 13. tit. 8. num. 194. & seq.

Quarto quod prætensa cognitione carnalis, quatenus in Processu

pro-

probata dici posset, & per relationem ad illum de ipsa verificari valeret decretum reformatum, contigisset in Statu Ecclesiastico, cum eius potissimum indicium desumatur ex ass. condormitione in eadem cella in Hospitio Castri noui, per Text. in cap. literis de presump^t aliasque auctoritates adductas per D. Pauperum Procuratorem in S. sed profecto. Adeoque non pro sola contrectatione, sed pro Adulterio potuisset, ac debuisset D. **Canonicus** p^ana condigna plecti, si probatum fuisset, quæ cum imposita non fuerit, nisi etiam de Injustitia redargui velit d. Decretum mitiorem p^anam irrogans, & solùm adaptabilem simplici deviationi, & complicitati in fuga excusationibus per D. Procuratorem charitatis adductis valde temperandam, asserendum propterea est, D. **Canonicum** nullatenus fuisse prò prætensa carnali cognitione damnatum nam qualitas p^en^c bene arguit delicti qualitatem, cui commensurari debet, iuxta illud Deuteron. cap. 25. ibi -- *Pro mensura peccati, erit, & plagarum modus & tradunt, Caball. cas. 31. num. 19. & cas. 145. n. 5. Chartar. dec. Crim. 50. nu. 5. & dec. 70. num. 3. & decif. 66. num. 86.*

Exclusa itaque prætensa condemnatione D. **Canonici** pro cognitione carnali Franciscæ Pompiliae, corruit quoque prætensa notorietas Adulterij ex illa resultans, quæ tamen nec etiam posset contra illam indefensam allegari, & sicuti non posset in eadem licite fundari publica vindicta a Iudice discernenda, ita nec multò minus excusabilis existimari valet priuata a viro ex interullo sumpta cum eiusdem nece, solùm a poena ordinaria immunis, iuxta mitiorem sententiam, quando per liquidissimas probationes de Adulterio constat à D. D. exemplificatas in confessione, vel sententia super illo emanata.

Prout etiam superfluum esset elidere præsumptiones per DD. Defensores, præcipue per D. Procuratorem Pauperum adductas ad eruendam ex ipsis Adulterij probationem, sufficeret enim vnica responsio, quod omnes cumulatæ fuerunt in Processu super fuga, & deviatione confessio ad instantiam D. Guidonis eodem urgente pro lucro dotis propter Adulterium, & per D. pro Fisco scribentem tunc acriter super illis fuit institutum, & tamen in relatione Causæ non fuerunt a DD. Iudicibus in consideratione habitæ ob ipsarum irrelevantiam, ut constat ex leuitate poenæ contra ipsum D. Ca-

nonicum decretz. Adeout nequeat modò illarum examen
refractari postquam Fiscus succubuit , & adhærens sententiaz
acquieuit , a qua provocare poterat , si se grauatum sentie-
bat , nec licitum ei erat ad immanem facti vindictam conuo-
lare ; ne tamen aliquid intactum relinquatur , & Iustitia
Decreti clarius asseratur; breviter easdem consutandas assu-
mtere opere pretium duxi.

Et quoniam primo loco consideratur per D. Defensorem causa
fugæ , vt illam omnino illicitam , & ad commodiorem caro-
lem cognitionem ordinatam suadere valeat excutiendæ sunt
probationes ad id allatæ , quarum præcipua desumitur ex af-
ferta Epistola Franciscæ Pompilie , scripta D. Abbatii France-
schino , Genitores insimulando , quod ipsam adigerent , vt Vi-
rum , Cognatum , & Soctum veneno perderet , Domum com-
burret , & cum Amatio ad urbem remearet , cuius profectio
melior confutatio haberi non potest , quam ex ipso eiusdem
Epistole tenore adeò inverisimilia , immo incredibilia conti-
nente , vt meritò spreta fuerit a DD. Iudicibus ; Quis enim
filialis amoris , & obseruantæ adeò expers , & immemor re-
periri poterit , vt sibi persuadeat , tenerimam puellam , tunc
decimum quartum ætatis annum non excedentem , vt ex fide
Baptismi Summ. num. 2. extri Patrios Lares nuptam , & de
discensu Parentum acri dolore percussam , & sin domo Viri
peßimè habitam , vt coacta fuerit recutus habere ad Supe-
riores tam Ecclesiasticos , quam Laicos adeò improba sibi
ab ipsis tradita nedum consilia , sed imperia æquo animo
conscriptisse Viri Fratri eisdem notoriè infenso , nisi vt ipsa
ingenuè fateretur ad ea conscribenda coacta fuisset a Viro , cui
citra maximum periculum hæc imperanti reluctari non po-
terat , cum ipsa sola inverisimilitudo apta legentibus horro-
rem iniijcere satis ostendat , id non sponte , sed coacte gessisse ,
iuxta tradita per Farinac. conf. 2. num. 34. antè med. lib. 1.
& conf. 60. num. 31. in fin. Caball. resolut. crim. cas. 199. num.
36. vbi quod non est admirendum , quod nemo sanus pro-
baret , Vermigl. conf. 3. num. 6. & 7. cum alijs ibi relat.;

Ac propterea opus non est examinare an verisimilis existimandæ sit qualitas confessioni adiecta , quod maritus designauerit
elementa d. Epistole , quæ super inductio ab ea calamo , fuerint
sacerdotio notata , quia ipsa scribere nesciebat . Perhorruit
enim forsan etiam metu adactam se talia scripsisse fateri in-
per-

perniciem Patris, & Matris, qui tamen in misera uxore tene-
ræ etatis omni auxilio destitutæ extra Patrios Lares, & in do-
mo viri est omnino præsumendum, ut tradunt Menoch. confit.
1. num. 290. lib. 1. Graueit. conf. 14. num. 3. lib. 1. Cepol. caut. 221.
num. 4. & 8. Magolos. de metu cap. 2. §. 7. num. 15. vbi quod ex
absentia consanguineorum resultat præsumptio metus, Ca-
pyc. Latr. dec. 138. num. 16. & præsternit post inutiliter habitos
recursus ad superiores. Contraria probatio sufficienter non
deducitur ex ipsis Franciscæ Pompilie subscriptione in ca-
pitulis matrimonialibus, & ex assertis Epistolis successiæ ab
ea conscriptis, & D. Canonico transmissis, aut à fenestra pro-
iectis, ut refert Testis Fisicalis in Processu fuga fol. 108. Quo-
niam breuissima subscriptio exarata in Capitulis matrimonia-
libus non præfert talam peritiam scribendi, ut cum eadem
commoditate adeo longam Epistolam conscribere potuerit,
cum quotidiana experientia doceat, plures reperiri, qui vix
proprium nomen scribere valent, eaque multo minus ex as-
sertis Epistolis probata dici potest, cum fuerint ab eadem
constanter negatae nec satis verificatae dici valent ex assertio-
ne dicti Testis Fisicalis, quod ipsa proiecit è fenestra cartam,
quam D. Canonicus collegit, & discessit, quia vitra quod est
vnicus, & vilissime conditionis scilicet in honesta Meretriz
ideoque ineptus ad conuincendum, ut monet Text. in cap. ve-
niens, cap. licee uniuersis de Testib. Farinac. de Testib. q. 64. n. 28.
Vermigl. conf. 146. num. 3. D. Canonicus Raynald. in sintax. rer.
crimin. tom. I. cap. 4. §. 10. num. 118. nec affirmat, nec affirmare,
potest, illam esse Epistolam à Franciscæ Pompilia conscri-
ptam. Prout aliena manu conscribi potuissent Epistolæ in
Carcere Castri noui reperte, & quatenus etiam fuissent ab
ipsa exaratae, cum sint posteriores, non arguunt peritiam scri-
bendi de præterito, quia hæc potuit acquiri ex post, despera-
tione ingenium acuente, ut D. Canonicum allicere posset ad
fugam cum ipsa captandam, ut ita euaderet imminentis mor-
tis periculum; In his enim quæ variabilia sunt, & superueni-
te possunt, à præsenti non bene arguietur ad præteritum, ut
tradunt Alciat. in tract. de præsum. reg. 3. præsum. 28. nn. 2. vers.
Et idem credo, Graueit. de antiquit. temp. in ult. part. num. 5. Me-
noch. de præsumpt. lib. 3. præsumpt. 93. num. 7. & quod de facto in
Ciuitate Aretina post discessum Parentum scribere didicerit,

constat ex eiusdem Epistola scripta in Carcere Castri noui reperta inter domesticas scripturas post obitum illius data in presenti Summ. num. 3.

Verificationes quoque praefatae Epistolæ desumptæ ex litteris D. Præsidis, seu Commissarii Arctij, Reuerendissimi Episcopi, & D. Bartholomæi Albergotti, tantum abest, ut licitam fugæ causam ab ipsa Francisci Pompilia, & D. Canonico in Processu fugæ adductam excludere valeant, ut potius eamdem confoucent; Nam dum redargunt tanquam inconsultos recursus ab ipsa habitos, forsitan ad se eximendum à censura, quod ipsos imprudente reiecerint, eo magis credibile est, per illos exasperatum fuisse animum ferociæ virtutis, & immitis, ac semper, ut experientia docet implacabilis socrus, quem multò magis exacerbatum fuisse quilibet sibi persuadere poterit post motam litem super suppositio ne Partus, & rescissione instrumenti dotalis, & publicatas scripturas super angustia rei familiaris, & pessimis tractationibus habitis Arctij in domo coniugum, & ex concepta suspicione amoris erga D. Daonomicum, quamvis simulati ad illum alliciendum ex qua viri exasperatione capitale odium excitante, quod oritur ex lite super re magni valoris, & multo magis de toto asse, ut aduertunt Grammat. conf. 46. num. 4. Grauenst. conf. 75. num. 11. Decian. tral. crimin. lib. 3. cap. 25. num. 56. & 57. Vermigliol. conf. 321. num. 5. Farinac. quast. 49. num. 2. qualis reputanda erat controversia super suppositione Partus, negari prosector non poterit iustus timor infælicis uxoris de suæ vitæ discrimine, ad quod evadendum in desperationem acta licet potuerit fugam arripere, quod si licitum est ob simplices percussionses ultra terminos permisæ correctionis, ut post Anchæran. conf. 408. & Tiraquell. in leg. 1. connub. num. 24. monet Moller. de Cornui. cap. 5. num. 24. quantò magis licitum existimari debet, dum vxor sibi mortem ferro, aut veneno inferendam continuo timebat, pro qua vitanda prudens consilium fuit à viro recedere, & ad Patrios Lares remeare.

Satiùs quidem fuisse securitatem captare, recursum habendo ad Reuerendissimum Episcopum, ut ipsam in aliquo Monasterio, vel penes honestam matronam collocaret, vel ad D. Commissarium, qui eiusdem indemnitatib, & honoris familiæ virtutis consiluisset, aut saltē in societate cuiusdam attinentis fugam

fugam arripere, sed ultra, quod timor imminentis periculi non fuit meliora consilia sumere, & praesertim miserrimæ mulieritatem ætatis omni auxilio destitutæ, & expositæ futori virti, ac socrus, timeret poterat frustra nouos recursus ab ipsa habendos, dum primos iam inanes experta fuerat, nec alium aptiore modum inuenire valebat ad fugam tunc arripiendam, in qua unicum remedium sibi superesse existimabat, quam adhibita ope, ac societate Domini Canonici sibi ad hunc effectum propositi à Domino Canonico de Comitibus, & Domino Gregorio Guillelmino Viro affinitate coniunctis, quos credibile non est sine maxima, & urgenti causa, & confidentia de illius honestate, atque modestia in perniciem honoris eiusdem conspirasse, quorum alter, scilicet Gregorius sese etiam exhibuerat Comitem itineris, & id quoque præstisser, si eius infirmitas permisisset, ut ex d. Epistola Francisci Pompilia post obitum reperta exhibita in praesenti Summ. d. num. 3. eamdem causam infirmitatis Gregorij referente, atque imminentis periculis quod passum non fuit, ut illius conualescentiam expectaret. Adeoque cum necessitate cogente in societate D. Canonici perspectæ ab ipsa modestiæ, ut pariter constat ex alia Epistola Summ. exaduerso num. 7. Epist. 12. in qua cum castum Iosephum appellat, & ex altera, in qua ipsius verecundiam commendat, exaudita est, si necessitate cogente hoc remedium elegit, ex vulgato axiomate, quod necessitas legem non patitur, de quo Ancharen. conf. 191. num. 4. & 5. & conf. 243. num. 4. Cephal. conf. 451. num. 283. Gaill. obseru. lib. 1. obseru. 102. num. 8. Gevall. com. contr. comm. som. 4. quest. 6n. num. 50. Bellett. disquis. Cleric. rit. de discipl. Cleric. part. 1. §. 4. num 55. Tiraquell. de pan. temp. caus. 33. num. 3.

Desumenda propterea non est causa illicitæ fugæ propter in honestum amorem, quo Franciscus Pompilia D. Canonicum prolequebatur ex eiusdem Epistolis, quia licet amatorum videantur, tamen ut potè ordinatae ad allicendum eundem D. Canonicum, ut cum ipsa fugam arriperet, quam sine illo nec exequi, nec tentare posse agnoscebat, nullum probare valente indicium sequuti adulterij, quod licet resolter ex literis amatorijs, ut ex autoritatibus adduqtis per D. Defensorum in S. His probabilijs, tamen illud prorsus elatum remaneat,

si ad finem licitum, qualis est fuga pro vitando discrimine
vitæ sive directæ; Num tunc sicuti permisus est finis, ita lici-
ta existimanda sunt media. quamvis suspicione non carentia,
qua non per se, sed propter finem considerantur, ut tradunt,
Gratian. discept. for. cap. 5 80 num. 8. Gob. consult. 119. numer. 72.

Et adhuc non est adeo violenta præsumptio adulterij ex lit-
teris amarotij desumpta nisi sequitur fornicationis implici-
tam confessionem involuant, ut explicando *DD. contiarium*
astereuies tradit, Sanch. de matrim. lib. 10. tit. de diuort. discurs.
12 quest. 3. num. 48. eoque relato Moller. de Cornu. cap. 7. nu. 24.

Vrgente præseruim ad id suadendum consideratione, quod in-
felix puella existimabat D. Canonicum modeste secum se ha-
biturum in itinere, dum ipsum alias de modestia, ac casti-
te commendatum obiurgare non desinit in vna ex Epistolis,
quondam eidem carmina in honesta transmiserit *Summ. præsenzi*
*num. 4. ibi -- E mi merauiglio, che voi, che siete tanto casto, ha-
uete composto, e copiato cose tanto poco honeste -- & infra ibi --
ma io non vorrei, che voi faceste così in ogni cosa, come ha-
uere fatto in questi libri, che il primo è stato tanto honesto, e que-
sto ottiene subie il contrario, che voi da tanto honesto, che siete, di-
uenteraste tanto ardito, il che non credo - ex qua profecto sincera
obiurgatione constat, quo animo conscriptæ sint Epistolæ,
sicut blanditiæ, & amoris significatiōnes continentæ, dum
ipsa etiam ab in honestis carminibus sibi transmissis abhorre-
bat. Adeoque ipsæ Epistolæ secundum intentionem soribe-
atis, sicut verba iuxta intentionē proferentes intelligi debent,
ut ex *Texti. in cap. Intelligentia. & cap. Præterea de verb's signi-
fic. monet Oldrad. conf. 9. num. 3. Surd. conf. 431. num. 35. Moliv.
de rit. nupt. lib. 3 quasi 85. num 50.**

Lewis propterea, & improbabilis existimanda non est creduli-
tas, quod in itinere matronalem pudicitiam eruauerit infelix
vxor velocissima fuga propriæ incolumitati consulere satan-
gens, & quod ea non fuerit à D. Canonicō tentata, dum
amor inter iplos intercedens vnicè probatur ex dd. Epistolis
ad fugam ordinatis, & quæ præseferunt sollicitudinem mode-
stizæ, ac continentiaz, dum pro sola transmissione adeo con-
quæsta fuit, timens ne audax evaderet, ut constat ex particu-
la relata Epistolæ. Nec desunt exempla servatæ continentiaz
in longiori, & commodiori itinere per Amantes suscepto,
aque

arque completo, quamvis licet possent Amoris stimulis indulgere, Vnde inuerisimile non est, intra illius limites se religiosè continuisse miseram vxorem in vita discriminem constitutam, quod evadere precipiti fuga præstulabatur.

Longè debiliores sunt alia præsumptiones præiens Adulterij, ac proinde merito spretæ in relatione Causæ tam super fugam, quam pro decernendo tormento; Murius enim Amor inter ipsam, & D. Canonicum non satis probatus dici potest ex præfatis Epistolis utpote tendentibus ad præordinandam fugam.

Ingressus, & egressus tempore nocturno in domum Franciscæ, & ab illa reipæciuè, probatur per unicum vilissimum Testem, nec est ad malum finem præsumendus, dum tendebat ad præparandam fugam; Quoties enim habemus causam expressam licitam, ad quam referri potest, non est tribuendus causa illicitæ, & criminosa, ut per Text. in leg. merito ff. profac. tradit in terminis Crasett. conf. 205. num. 7. & 8.

Ad quam etiam referri debeat facilitas se spectandam exhibendi in fenestra ad sibilum diu, noctuque signum præbentem traholentis prætensi Amoris, quia cum amor simuleretur ad illum alliciendum, ut fugæ operæ ferret, se socium itineris præbendo, nil magis operari valent istæ Amoris significaciones, quam ipse prætensus Amor, quo tanquam stratagema infelix Vxor via fuit, ut propriæ incolumitati consuleret; Et ita recurrit responsio, quod dato licto fine damnanda non sunt media ad illum asequendum ordinata.

Prætensus quoque modus infidiosus, quo fugæ fuit præparata, & executioni demandata per somniferum Viro, & Domestici propinatum, quatenus probaretur. prout nullo modo fuit in Processu probatus, præberet quidem fugæ indicium, sed non etiam Adulterij, dum hæc non fuit ad illud præordinata, sed ad effugientium viræ periculum, cui nimis improvidè se vxor commisisset, nisi iacentem secum in lecto Virum sopore oppressum nacta esset, vel etiam talem commoditatem procurasset.

Zelotipia in aliquibus Epistolis patescet, est quidem signum Amoris, iuxta illud Poetæ -- Res eß solliciti plena timoris Amor -- sed quoties, ut dictum est, Amor fuit ad liceum finem

nem simulatus , potuit etiam ad illum fingendum admisceri ostentatio zelotipia ad eumdem finem tendens capienda benevolentia , ut voti compos euaderet ; Ex quo propterea simulatio Amore , & confusio eius signis argui non potest , quod discessus simultaneus à domo Viri , & associatio per longum iter prætensi Adulterij probationem inducat , cum etiam in casu intercedentis veri reciprocí Amoris seruata fuerit continentia , quod certè magis difficile est.

Ne applicantur adductæ anctioritatem per D. Defensorem in §. Accedit quod: Quia *Textus in L. Consensu S. Vir quoque G. de repudio procedit in muliere absque iusta, & probabili causa per noctante extra domum Viri eo inuito, ut constat ex verbis eiusdemque dispositio casu i nostro non adaptatur, dum misera Vxor discessit à domo Viri, & ad Parrios Lares se contulit, vt vita periculum, quod sibi imminere timebat, effugeret, & ita dum ex iusta, & probabili causa id egit, præfati Textus censura potius retorquetur, & ita etiam suam assertiōnem explicat Farm. in contrarium adductus quest. 136. num. 182. ibi -- Secus si cum causa subdens, quod sola pernoctatio non probat stuprum, quia potest dari casus, quod Vxor pernoctauerit etiam cum Viris, & tamen Matrimony fidem non lascerit, & op. simile Grauett. cit. cons. 105. num. 11. vers. 2. principaliter considero, qua possiblitas cum verisicutur in casu quoque nostro non potest ex fuga, & associatione in itinere ad finem consalendi propriæ indemnitati desuini præsumptio sequenti Adulterij.*

Mutua deosculatio in itinere non leuem præberet violare pudicitiae præsumptionem, quatenus probaretur, sed oīnis fluxa est probatio resultans ex dicto vnius vilissimi Testis prorsus inuerisimilia deponentis, quod scilicet dum Currum volantem vulgo Caleffi citato cursu ducebat, viderit Franciscam. Pompiliam, & Canonicum se invicem deosculantes; Quam animosa sit hęc depositio, ex eo constat, quod respicit factum nocturnum, & quidem momentaneum, & transitorium nulla redditia causa scientia, quod Luna luceret, vel aliud artificiale lumen coniunctitatem præbuerit illud videndi, ut tradunt Bursat cons. 34. num. 6. Farinac. de Testib. q. 66. num. 38. Giurb. cons. Grim. 37. num. 41. Polidor. Rip. de noct. temp. cap.

*cap. 57. num. 7. D. Canon. Raynal. tom. I. cap. 11. §. 8. ad
13. num. 8.*

Augeturque inuerisimilitudo, sèu potius incredibilitas, quod dū Testis intentus erat ducendo Curriculo cùm eximia velocitate volatum imitante, vt deponit aliis Testis potuerit retrospicere, & mutuæ deosculationis aërum videre, quæ inuerisimilitudo fidem adimit nedum vni, sed pluribus testibus, vt in celebri Perusina Laudi relata per *Vermigl. conf. 75. num. 4.* considerata insuper possibiliter, quod ex velocissimo cursu potuerit contigere collisio manentium in Curriculo, & ex ea crediderit Testis nimis curiosus, quod ipsi se inuicem deoscularentur. cum re vera merè casualis esset approximatio utriusque capitis, vel faciei non ad impudica oscula libanda præordinata, quoties autem aërus trahi potest ad bonum, vel malum sumenda semper est præsumptio mali exclusiva, vt monet *Alex. conf. 128. lib. 4. Grauett. citata conf. 205. num. 9.* & seqq. Atque ideò merito hæc præsumptio ex defectu probationis spreta fuit in dicta relatione Caulæ super fuga, quæ cætero quin spernenda non erat.

Nullumque fomentum recipere valet nimis inuerisimilis, & animosa dicti Testis depositio ex præensis Epistolis, in quibus Francisca gratias agit de osculis transmissis, quæ cariora si bi fore profitetur, si verè à Canonico tradita fuissent, & decies centies millies eidem trasmittit, non enim exindè inferunt, quod arrepta commoditate mutua deosculatio contigerit cum ista sint verba officiosa, & captatoria prolata ad finem alliciendi, quæ obligationem non pariunt, vt firmat *Decian. conf. 55. num. 14. Paris conf. 89. num. 27. Corn. conf. 129. num. 3.* & seqq. *Laderc. conf. 101. num. 1. & 2. Gen. descript. privat. lib. 3. de Epist. num. 13. & 14.* eiusque propterea excursionis præsumptionem non inducunt, maximè cum eadem Francisca pluries Canonicum monuerit, vt modestiam seruaret, & dum eius fines ipsum transgressum fuisse competit sibi transmittendo Carmina parùm honesta, eundem obiurgauit, ne in posterum audax evaderet suum desiderium, insinuando, quod longè distat ab impura cupiditate illius oscula recipiendi in dicta Epistola officiorē, & circa intentionem matronalem pudorem temerandi exposita.

Vsus quoque vestium Laicalium, quibus repertus fuit indutus

Ca.

**Canonius nullum præbere valet indicium, quia cum non-
esset Sacerdos, venitus dici non poterat in itinere, fuitque
ad bonum finem forsan ordinatus se celandi, & auertendi
scandalum, quod concepi potuisse videndo personam Ec-
clesiasticam cum muliere floridæ ætatis, & ut audiui non-
spernendæ famæ iter facientem absque alterius fæminæ, vel
famuli comitatu, Adeoque non applicatur auctoritas *Manb.*
Sanc. de re crimin. cost. 1. num. 31. quia in eius casu nulla
concurrebat causa, propter quam Clericus, vestibus indece-
tibus, & armis instrutus incederet, & repertus fuerat à Vi-
to, vel in ipsa turpitudine, vel in præparatoriis ad illam, &
illicet interseclusus fuerat, quo casu Adulterij præsumptiones
benè admittuntur ad minwendam penam, & ad hunc effectum
ab eodem Auctore cumulanrur.**

Condormitio tandem in eodem lecto, vel saltem in eodem Cu-
biculo in Hospitio Castri novi non fuit in consideratione ha-
bita in dicta relatione **Causæ super fugæ ex defectu probatio-
nis negata** quippe fuit à Francisca Pompilia, & Iolum Cano-
nicus ingenuè fassus est, quod parumper quievit in alio lecto
in eodem Cubiculo manente, nec breuis mora in eodem est
ad delictum trahenda, dum tribui debet custodia suscepit d.
Francisca, cui socium Itineris se præbuit, & proprietà rene-
batur eam custodire, nè aliquid mali ipsi enenitet; Quoties
autem adūs ex causa licita gestus dici potest, cestas suspicio
mali, ut in præcisis terminis monet *Cranci d. cons. 205. n.
9. & seqq. ubi num. 15. ait* quod ad humaniorē partem
semper est habenda interpetratio, quamvis rigorosa videatur
fortior subdens *num. 20. & 21.* non sufficere ad plenam pro-
bationem Adulterii, quod quis visus fuerit solus cum sola
& nudus cum nuda, & quod iuuenis fuerit iuuentus in cubi-
culo clauso cum muliere dispicatoratus, & caligis solutis,
quia haec possunt esse mera præparatoria, quoties, criminali-
ter agitur. Adeoque multò minus eius præsumptio insurge-
re potest ex brevi mora in eodem Cubiculo custodie cau-
sa.

Neque probatio Condormitionis in eodem lecto desumi potest
ex depositione Cubiculari ejusdem Hospitiū alterentis ynum
tantum lectum instrui ubi demandatum fuisse, non enim exim-
de

de sequitur ambos in illo cubasse , id autem & quum fuit, quis sola Francisca parumper quiescere volebar , ut vires reficeret celeritate peraq̄ itineris prostratas , Canonico ad eius custodiam excubante,& prosecutioni eiusdem itineris parandæ incumbente , prout de tempore , quo maritus superuenit, id exequebatur præstolando aptari Curriculum. Atque ideo nulla ex tali depositione resultare valet probatio Condormitionis , eaque merito per DD. Iudices reieq̄a fait , ultiori confutatione noui indigeat.

Et quamvis Francisca Pompilia in suo examine occulata & affraterit longiorem moram in dicto Hospitio assertudo ad illud peruenisse in Aurora, nullum tamen ex dicto mendacio argui valet indicium prætensi Adulterij, quia id forsitan affruerit ad magis auertendam suspicionem violata pudicitiae , quæ potuisse ex longiori mora,& maiori commoditate concipi; Vnde cum si ea fassa fuisset cum circumstantiis seruatam modestiam suadentibus , nihil eidem obesset confessio , ita nec obesse valet mendacium , ut tradunt Marſil. confilio 15. num. 15. Bertazzol. conf. 59. num. 7. lib. 1. Vermigliol. conf. 45. num. 20. & conf. 273. num. 7. Farinac. conf. 192. nu. 11. ad med. versum etiam & conf. 222. num. 14 & queſ. 52 num. 14. & seqq.

Ex his cum exclusa , & pænitū elisa remaneat probatio prætensi Adulterij, curandum non est, quod D. Guido in confessione qualitatem apposuerit causæ honoris respicientis non solum. Vxorem, sed ipsosmet socios, quæ confessio scindi non potest, saltu ad effectum interrogandi pænam ordinariam ; ultra quod enim non desunt magni nominis Doctores etiam ad hoc qualitatem confessioni adiectam reiiciendam esse affirmantes , & præ alijs Bartol. in L. Aurelius § Idem queſauit ff. de liber. cau. quem fecuti sunt Bald. qui pluribus hanc probat conclusio- nem , & responderet contrarijs in L. 1. num. 44. & seq. Cod. de Confessis, vbi quod Iudex non debet admittere hanc qualificatam confessionem Beron. in cap. At si Clerici num. 73. de ludic. vbi alijs relatis de magis communi testatur Angel. de malef. verb. Comparuerunt d.d. Inquisiti &c. num. primo , Foller. in pract. Crim. verb. & si confitebuntur par. 1. numer. 46. Boffaratt. Crim. tit. de confess. num. 19. vbi quod in hoc Bartolus est com- mu-

muniter approbatus, Menoch. de arbitr. cas. 93. num. 37. ubi de
communi, Clar. in pract. S. fin. quest. 55. vers. Posset quoque
reus, vbi reprobatis contrarijs, hanc dicit magis communem
opinionem, & ab ea in iudicando non esse recedendum, Pa-
cian. de probat. lib. primo cap. 25. num. 13. Gutter. quest. 19. numer.
33. & 34. Spad. conf. 109. num. 22. lib. 1. Conciol. verb. confessio re-
sol. 24. num. primo, & seq. Vermigliol. confil. 238. num. 6. & conf.
282. num. 1.

Huiusmodi honoris causa non semper prodest pro vitanda vlti-
mi supplicij pena, sed tunc solum, quando vindicta sumitur
incontinenti, vel iuxta mitiorem opinionem etiam ex inter-
vallo legitimè tamen probato Adulterio per sententiam con-
demnatoriam, vel confessionem.

Nimis autem lacarentur habentia priuata vindictæ in perniciem
Reipublicæ, si deficiente probatione Adulterij pro minuenda
pena, standum esset qualitati per Reum confessioni adiectæ,
quia sic euaderet Testis in causa propria, quod nemini per-
missum est, iuxta Texi. in L. nullus ff. de Testib. & in c. Nullus
eodem tit. Rot. Ian. decis. 94. num. primo, & in rec. decis. 261. num.
3. par. 3. & decis. 272. num. 19. par. 17. & onus probationis ei-
dem incumbens pro effugienda pena ordinaria impletum
remaneret ex ipsa sola Rei assertione, quo nihil absurdius ex-
cogitari potest.

Ceterum non est admittenda opinio, quod probato etiam Adul-
terio liceat Marito vxorem Adulteram ex interculo interficere
absque in ipsis poenæ Capitalis, cum eam reprobent gra-
uissimi Auditores, ut præter adductos in Informatione §. Ceterū
usque aa §. Solumque, & in responsione §. in Iure videri possunt
Bartol. in L. 1. §. Cum igitur ff. de vi, & vi armata, vbi distin-
guendo inter iniuriam realem, & personalem firmat, quod
quando Iniuria est personalis, debet propulsari incontinenti,
si vero sit realis, potest propulsari ex interculo, Gomez. ad
leg. Taur. 82. num. 58. §. Item quia vers. Sed his non obstanti-
bus - ibi - ego teneo contrariam sententiam, imo quod Maritus
puniatur pena ordinaria delicti tanquam Homicida, nec pro-
pter hoc aliquo modo excusat, quia verè commisit Homicidium,
nec potest compensare delictum, vel effensam præ-
teritam, nisi in eo casu, quo occiderit in flagranti Crimine, &c.

&

& subsequentibus numeris responderet contrarijs fundamentis Bellon. de ys, quæ sunt in continentia cap. 65. num. 17. Gaill. præf. obser. lib. 2. obseru. 101. num. 5. vbi postquam firmant, quod Homicidium causa honoris commissum sit licitum ait. Intellige autem hanc fallentiam procedere si incontinenti Injuria restorqueatur, secus si ex interculo hoc fiat, quod casu talis restorsio magis ad indiciam, quam honoris defensam spectaret, & proinde ratione Injuriarum tenetur. Boff. tit. de Homicid. num. 87. Mart. vot. 306. num. 5. & 6.

Multoque minus prætendi valer, quod vindicta fuerit incontinenti sumpta, quia Maritus statim, ac potuit, eum fuit executus, ex auctoritatibus adducatis per Dominum meum Pauperum Aduocatum S. A'qua quidem cum frq. vbi ostendere conatur, quod cum esset inermis, vel impotibus armis, scilicet Ense tamen viatorio instrutus, aggredi non potuit vxorem associatam à Canonico viro strenuo, & audaci, ac solito in similibus delinquare, & arma sulphurea gestante, & qui se præputum obtulerat pro defensione Amasæ mori, addito insuper, quod Vxor stricto in ipsum gladio irrupit, necem illatura, nisi coercita fuisset à Birruarijs. Quoniam commoditas occidi Adulteram non est ita sumenda, vt nex illi valeat inferri cum omni securitate, & absque ullo discriminione. Ab hoc enim omnis abhorret Iuris Censura excusationem præbens pro minuenda poena, si ea sequatur ex impetu inconsulti doloris, qui Maritum cogit ad negligendum propriæ vitæ periculum, ve illatam sibi ex Adulterio injuriam vlciscatur. Prima itaque commoditas à Doctoribus considerata, vt Homicidium dicatur incontinenti patratum. intelligi debet cum primùm se se obtulit occasio, & in dictam sumendi, excusando illius dilatationem, vel propter absentiam, vel propter aliam iustum causam, vt in casu, super quo sci. ipse Marth. Sanf. contr. 12. In eo enim Adulterium commissum tuerat absente viro, & vxor aufugerat, ita ut prius ipse se vlcisci non potuerit, vt constat ex serie facti relata num. 1. & num. 28. conclusionem ita statuit. Ieaus excusentur, prætersum si statim, ac possint, vindictam sumperint, cum tunc incontinenti occidisse videatur

Quis autem affirmare valeat, Maritum in casu nostro primam occa-

occasione sum pessime, dum reperta vxore in ipso actu fugaz in Hospitio Castri Noui abstinuit a vindicta facti, & ad illam Iuris conuolauit, quam semper prosequutus fuit, nimisque profecto ignavia se accusat, afferendo, quod impar esset pro ea perficienda ob ferocem Canonici naturam, quia dum ipse reperiebatur arrestatus, poterat in Vxorem irruere, nec qualitas armorum ipsum terrere debebat, quia ex descriptione facta in Processu apparet, quod Ensem tantum gestabat, adeo quod paribus armis erant instruti, nec adeo propriæ incolumitati consuluisse, & stimulis bonoris reparandi suisset adactus ad vindictam sumendum cum aliquo etiam illius discriminz latus enim dolor modum nescit, sibique imputare debet, si solus, & imparibus armis vxorem cum Amasio valido, & melius armato ut timere poterat fugientem insecurus fuit, isteque modus insequutionis potius arguit eius animum fuisse conuersum ad vindictam Iuris pro lucro doris captando, quam ad vindictam facti pro reparando honore. Factum enim optimè ostendit, qualis fuerit animus, ut per Text in L. 1. §. fin. ff. de dol. traduci Grammat. conf. 13. num. 2. & 3. & decif. 37. num. 6. Mascard. de probat. lib primo concl. 95. num. 1. & 2. Farinacci in fragm. Crim. parte prima littera B. verb. Animus numero 228.

Dilatio pariter vindictæ post redditum vxoris ad domum paternam excludit prætensam qualitatem, quod fuerit incontinentia sumpta quia prius exequutioni mandata non potuerit nam ille contigit die 12. Octobris anni præteriti, & nex eidem illata fuit secunda Ianuarij præsentis anni, & potius affirmandum est expectatum fuisse illius partum sequutum die 18. Decembri, ut successio ad quam Maritus inhibebat in tuto posneretur dum statim pessimum consilium vxorem eiusque genitores immanni excidio perdendi fuit executioni traditum, ut ex combinatione tempotuni facile erit dignoscere exindeque etiam constat quo animo illud perpetratum fuerit, & an pro asserta reparatione leui honoris vindicta dici valeat incontinentia suscepta idest cum primum commoditas, & occasio se obruit iuxta in contrarium adductus authoritates.

Electa proinde vindicta Iuris per Carcerationem Vxoris, & præsenz Amasis, & prosecutionem cause Criminalis, licitum nos fuit

fuit ad vindictam facti regredi, eamque sumendo dici non potest, quod incontinenti vltionem suscepit, & publicam Iudicij, iudicij supremi Principis Majestatem violauit, quæ sola circumstantia valde pœnam exasperat, & delictum extollit, ut monet Text. in l. quod ait lex S. Joh. ff. ad leg. Int. de Adulter. Angel. de malef. vers. Che hai adulterato la mia Donna, num. 21. in fine cum alijs relatis in præterita informatione S. Solumque.

Absque eo, quod applicari valeant conclusiones per D. meum Pauperum Aduocatum adductæ in S. Et tantum obest cum seq. & auoritates illas comprobantes, quod Iniuria non sprælatur à Marito remissa, sed potius continuatio animi se viciendi proditionis exclusiva, licet Maritus dissimulatione usus fuerit pro vindicta sumenda; Quia questio in præsencia non est super qualitate Homicidij, ex quo illud verè proditorium prætendatur, nec Maritus Iniuriam dissimulauit, sed potius eam propalauit, conuolando ad vindictam Iuris, quæ licet forsitan minus honesta, tamen dum ei placuit, ut Dotem lucratetur, non potuit sua spe frustratus, ob non probatum Adulterium, reassumere vindictam facti, dilationis excusationem prætendendo, quod scilicet illam prius exequi non potuerit. Cum enim dilatio, & impedimentum prouenerit ex facto proprio, non potest ex illo præsidium excusationis captare, iuxta regulam Text. in cap. Damnum de regul. Iur. in 6. Ros. decis. 345. numero 15. parte 17. & decisione 609. numer. 12. par. 18. rec.

Sed vicinque excusanda esset barbara nec miserrima vxori sub Iudice manenti, viro instanti, ac illam deferente, illata, certè prorsus inexcusabile reputari debet Excidium Petri, & Violantis, quibus licet adaptare quoque in confessione affectauerit causam honoris ob prætentam complicitatem tam insaudenda fuga, quam in asserta Vxoris inhonestate, nulla tamen huius qualitatis probatio afferri potest, nec illius umbra, vel minima resultat ex Processu fugæ. Ac prorsus innerisimilis, imò incredibilis detegitur ex sola consideratione, quod nullatenus consensisset D. Abbas Franceschinus Inquisiti, & Rei confessi Frater eorum custodiz committi vxorem eiusdem, si ali-

aliquam vel etiam levissimam suspicionem d. complicitati habuisse, dum adeò acriter honoris reparacioni anhelabat , qui planè consensus inscriptura Italico idiomate prò notitia facti exarata nimis animose negatus per D. Pauperum Procuratorem pro sua eximia ingenuitate admittitur , negando solum, cum ad notitiam Mariti peruenisse , vel solam scientiam præsumptam eiusdem à Fisco prætendi posse inferendo

Quæ tamen vlt̄rā, quod est valde probabilis, & ex violenta præsumptione deducta, cum nimis verisimile sit, quod à Fratre, fuerit certior redditus de Vxoris egressu è Monasterio, eiusque collocatione in d. domo cum obligatione suscepta per eius Genitores alimenta subministrandi , & maximè detecta, prægnantia, ut tradunt Gratian. discept. for. cap. 796. numer. 28. Grauett. consil. 123. num. primo & 2. Rot. decis. 341. num 6. parte 1. recent. In præsenti autem non agitur de scientia Mariti probanda, sed de inferenda ex dicto consensu præsumptiones exclusiva prætensiæ complicitatis Petri, ac Violantis in Vxoris inhonestate nullo modo probata .

Tantumque abest vt ea probata dici valeat respectu Petri, vt contrarium omnino constet ex eius Testamento condito des anno 1695. post introductam item super suppositione Partus, in quo, ea non obstante primo loco reliquit heredem, vslufructuariam Violantem vxorem, & post eius obitum Franciscam Pompliam cum onere habitandi in Vrbe , & honeste viuendi, vt appareat ex particula dicti Testamenti data in præsenti Summario num. 5. in quo etiam asserit, ipsam honeste ha-
cenus se gefisisse, & ob eius bonos mores legatum relinque-
re vslufructus profitetur. Adeòur prorsus incredibile deregatur, quod ipse viuens conspirare voluerit in eius inhonestatem, à qua mortuus quoque abhorruit, eam in casu, quo in-
honestam vitam duceret, relicto vslufructu priuando, & hor-
tando in casu dissolucionis Matrimonij ad religiosum babitum assumendum , relicto etiam ad hunc effectum pingui le-
gato

Prætensiæ verò complicitatis nullam præbere valet præsumptionem consideratio , quod simulata præsentatione episiolæ à Domino Canonico transmissæ statim per Violan-
tem

tem patet& fæcæ fuerint fores occisoribus, ex qua facilitate , ac
credulitate arguere conantur Domini Defensores , quod ipsi
non esset invisum nomen Amasij, & ita nec eius conuersatio
cum Franciscus Pompilia. Quoniam cum ipse fuerit Author li-
berationis eiusdem à periculo mortis eam à Domo Viri ad
Patrios lares traducendo neglego proprio discrimine mirum
videri non debet, quod grati animi significationem pro col-
lato filia beneficio conseruaret, & patesceret nec eginde in-
ferri valet consensus inhonestati quæ immunis erat præterita
correspondentia , multoque magis de tempore quo ipse ab-
sens reperiebatur , & in Civitate Vetera relegatus .

Vera igitur Causa, propter quæm ipsis quoque nex iliata fuit,
alia esse non potuit, quæm odium, quo Maritus exasperat ob
intentatam litem suppositionis Partus spem eludentis pingue
dotem,& successionem assequendj, & desiderium vltionis prò
scripturis promulgatis occasione d. Litis promouendæ luper
angustia rei familiaris, & pessimis tractationibus in domo vi-
ri receptis, quæ nullatenus excusat à peccata premeditati Ex-
cidij, quinimò illam exasperat, ut potè ipsum extollens ad Cri-
men læzæ Maiestatis, ex nota dispositione Constitutionis Ale-
xandrinæ, ut probatum fuit in præterita informatione §. Ac-
cedit ad exasperandam .

Pro cuius sanctionis, & dispositionis Bannimentalis eidem con-
formis censura effugienda, frustra recurritur ad excusationem
desumptam ex superuenta prouocatione , iuxta decisionem
Sac.Rotæ relata m post conf.67. Farin. id quoque admitteatis ;
Ea quippe quatenus resultare prætenditur ex consilio præsti-
to pro fuga , & complicitate in eadem , vltra quod eius pro-
batio vnicè delumitur ex asserta Epistola per Franciscam
Pompiliam scripta D. Abbatii Franceschino totiès reiecta , &
ab ipso quoque spreta , dum in Processu super fuga fabrica-
to nulla reperitur instantia , ut contra Petrum, & Violantem
procederetur pro prætensa instigatione , longè præcessit li-
tem motam super suppositione Partus , & rescissione instru-
menti dotalis , adeoque prouocationem exclusiuam causæ li-
tis patere non valet , quæ vltierius debet esse vera , & non
affectata, & delicto patrato correspondens, ut firmant Blanc.
de Indic. num. 255. & sequen. Vulpell. conf.99. num. 2. Farinac,
queſt.

queſ. 52. num. 145. & conf. 192. num. 2. lib. 2. & conf. 221. num. 22. lib. 3. Vermigl. conf. 25. num. 3. ea verò, quæ defumū prætenduntur ex complicitate in asserta in honestate, prorsus exclusa remanet ex defectu probationis tam in honestatis, quam conniventiz, itaut proueatio ex illa defumpta detegatur omnino irrelevans, ut potè affectata.

Alia quoque lis intentata nomine Franciscæ Pompilij super separacione Thori, frustra evitata prætenditur ob assertam nullitatem monitorij, quia exequutum fuerit contra D. Abbatem Franceschinum mandato Procuræ carentem; nam illud erat amplissimum ad lites, ut ex eius tenore relato in praesenti *Suum. num. 6.* constat, & ita inducta lite per monitorium, ut per *Glos. in Clemens. 2. verb. Plen.*, ut *lit. pendens firmat. Rota coram Buratt. decis. 109. num 1. & 5.* versamur in terminis Alexandrinæ Constitutionis, & dispositionis Bannimentalis editæ contra offendentes ex causa litis; Non relevante responsive tradita per D. Procuratorem Pauperum in *S. Quæ etiam aptatur*, quod, constito de inhonestate Vxoris, permittenda non sit impunitas ab Ira mariti suam iniuriam vlcilcentis, per introductionem lites super separatione Thori, nec dici valeat Homicidium pro reparatione honoris commissum, in odium lites patrum. Quoniam supponit id quod est in questione, probatam scilicet Vxoris inhonestatem, cuius probatio prorsus deficit, & ad summum procedere posset, si statim patreto adulterio Vxor instituerat Iudicium super separatione Thori; secus dum illud intentauit post eleam à marito viam vindictæ Iuris, criminaliter agendo pro prætenso adulterio, & pro lucro dotis, & postquam eius spe frustratus remansit, dum ex Processu nulla resultant illius indicia, itaut post exasperatum viri animum propria incolumitati consulere licetum ei esse debebat, remedium separationis Thori implorando, quo Iudicio pendente nex eidem illata poenis per Alexandrinam, & Bannimentalem sanctiones inflatis sit omnino expianda cuius etiam dispositio applicatur dum Vxori nex illata fuit pendente adhuc causa Criminali contra ipsam per maritum instructa super prætenso adulterio cum dicta Constitutione lites tam Ciuiles quam Criminales comprehendat ut constat ex eius lectura.

Co-

Coadunatio patiter Armatorum, eorumque in Urbem introducio pro securius patrando totius Familiae excidio delictum extollit ad Læsa Maiestatis crimen, & penam exasperandam suadet, ut firmatum fuit in præteritis, ea quoniam evitatur ex responsionibus traditis, leuè potius repetitis per DD. Defensores, & præsertim quod cum delictum principale perpetratum fuerit ex causa honoris, sicuti propter illam locum non habet ordinaria poena legis *Cornalia de Sicarijs*, ita nec interrogari valeat poena procoadunatione per Constitutiones Apostolicas, & generalia Bannimenta inficta, quia confunditur cum poena delicti principalis, quod est unice attendendum, cum animus, atque propositum maleficia distinguat, ut firmator in voto trium Sac. Rota Auditorum *Blanchetti, Orani, & Cocini* relato post secundum vol. conf. *Farinac.* dec. 6. i. Quoniam frustranca euaderet dispositio dictæ Constitutionis, & Bannimentorum si poena coadunationalis cessaret, quoties facta esset ad patrandum aliquod delictum mitiori poena puniendum, Si enim, ut aduertit *Farin. qu. 113. n. 160.* & ex eo repetit *Spad. conf. 25. n. 39. lib. 1.*; Bulla habet locum etiam, quando conuocantur homines ad arma in casu licito, & ad bonum finem, quia per illam Summus Pontifex consulere voluit publicæ securitati, & refranere audaciâ sibi de facto Insidientium, quanto magis locum habebit, quoties coadunatio sit ad malum finem scilicet ad delinquendum, quamvis delictum poenam ordinariâ non mereatur, illudque sequetur, ut arguit *Spad. d. conf. 25. num. 39. vbi in §. Et credo;* adducit rationem, quod Pontifex in hac Constitutione condenda considerauit solum tumultus, & alia mala, quæ ex conuocatione Armatorum contingere solent in perniciem publicæ tranquillitatis. Et licet eius opinio fuerit reprobata per Doctores à D. meo Pauperum Adiocenzo adductos in §. non refragante; confutatio non cadit super coadunatione Armatorum ad malum finem, quamvis non adeò criminofum, ut poena mortis imponi valeat, sed in casu licito, scilicet pro recuperanda incontinenti possessione vim vi retundendo, in quo etiam casu dispositioni Bullæ locum esse consuluit Spada, & ideo redargutio non efficit, quo minus præfata Constitutionis dispositio sit casui nostro applicabilis, dum coadunatio fuit præordinata ad Excidium integræ familie temerario ausu executioni traditum.

Quin

**Quin obstarere valeant vota dd. Sac. Rotæ Auditorum requiren-
tium , coadunationem esse ordinatam aduersus Principem ,
vel Rempublicam, non ex causa patrandi aliud delictum, quia
si dicta qualitas verificaretur, frustra edita fuisset Constitution
illam extollens ad Crimen Laſe Maiestatis , & Rebellionis
satis resultans ex ipso facto , & animo turbandi statum Princi-
pis , & Reipublicæ , & quatenus etiam conclusio in illis fir-
mata subfisteret, ea procedere posset , inspecta dispositione
Constitutionis, non etiam Bannimentali postea emanata, qñæ
sane inutilis , & frustanea euaderet, si poena capitalis per il-
lam imposta contra Coadunantes homines Armatos so-
lum habere posset locum, quando delictum, ad quod patran-
dum facta fuit Coadunatio, sit eadem poena plectendum , &
adhuc hac necessitate admissa non posset euitari applicatio
Constitutionis, dum nulla honoris causa pro excusanda nece
Petri, ac Violantis est allegabilis, & respectu Franciscæ Pom-
pilia nullatenus probata fuit.**

**Præparatio pariter armorum prohibitorum, eorumque usus pœ-
na capitali plectendus, inspecta dispositione Bannimentorum,
& Constitutionis sa. mem. Alexandri VIII. , sufficienter non
euitatur responsione tradita per D.D. Defensores, quod con-
funditur cum delicto principali, adeo ut maior pœna nequeat
pro illo imponi, quam ipsum delictum promereatur : Nam
vltra quod tali confusione pœnam bannimentalem absorben-
ti repugnat supra tradita respectu Coadunationis , & con-
trarium firmant Doctores adducti in præterita responsione
S. Nec delationis , & in contrarium allati procedere possunt
quoties agitur de insultu, vel homicidio in rixa patrato , vel
ad propriam defensionem, aut ex causa honoris incontinenti
reparandi, in quibus terminis loquitur Matth. Sanz. de re
Crim. diſ. controv. 11. num. 46. Cestat in calu nostro difficultas
ex clara dispositione Bannimentorum explicitè declarantium,
& iubentium, quod pœna delationis armorum non confun-
datur cum pœna delicti cum illis commissi , pro qua vitanda
non videatur sufficiens responsio tradita per D. Pauperum
Procuratorem, quod cum illa recipient interpretationem
passiuam à lute communi, cuius sanctione inspecta vnicum
delictum consideratur præparatio , & delatio armorum ad ef-
fectum patrandi cum ipsius homicidium , secùs si arma defe-
rantur**

rantur non ad malum finem, & deinde cum illis aliquod delictum committatur; Quoniam nimis asperum foret, quod maiorem poenam pataretur arma defensens non ad malum finem, & deinde cum illis delinquens, quam eadem preparans ad delinquendum, & etiam adhuc effectum deferens, ita ut nonquam talem interpretationem recipere valeat. Bannimera, quibus, dum vetita fuit delatio armorum ut potest perniciosa, & occasionem delinquendi praebens, multo magis prohibita, & rigorosa pena plectenda existimari debet delatio ad delinquendum ordinata maxime attenta declaratione, quod delicta non confundatur.

Superest tandem alia qualitas summoperè delictum aggrauans, violatio scilicet domus assignatae pro Carcere cum consensu D. Abbatis Franceschini. Absque eo quod allegari valeat ignorantia huius circumstantiarum, dum in dicta scriptura Italiano idiomate exarata pro tradenda sincera noctira facti assertur, quod eidem fuit à Fratre reliqua, & commissa omnimoda sollicitudo huius Causæ, dum ab Urbe dilcessit, ita ut prorsus incredibile sit, quod non fuerit ab eo de re tam relevanti certior redditus, & quoad discrimen inter violationem publici Carceris, & simplicis custodiæ in domo sub fideiussoribus, & licitam in eo quoque offenditionem ex causa honoris, satis fuit in præterita responsum §. Quibus accedit cum sequent., quod eadem virtusq; se ratio, cum in vitroque detenitus maneat sub protectione Principis cuius proinde maiestas ieditur, & quod excusatio procederet, si agatur de propulsanda iniuria in carcere illata, & in his terminis loquuntur authoritates per D.D. Defensores adductæ, ut constare potest ex illarum recognitione.

Cum ergo in praesenti tot grauissimæ concurrent qualitates delictum extollentes, propter quas D. meus Pauperum Aduocatus poenam exasperandam esse admittit in §. Agnoscit Fiscus, & talis exasperatio non nisi de pena Capitali verificari possit; nam aliás solum Homicidiū Vxoris ex intervallo patratū quatenus etiā probatū fuisset Adulteriū, quod in casu nostro nullatenus fuit probatum, iuxta mitiorem sententiā vnicā exposcere posset minorationē satis asserta, & à contrarijs vindicata dici debet Iustitia Decreti pro Tormento vigiliæ, ita ut accedente

*cedente confessione pro tanti facinoris expiatione condigna
poena inferenda remancat.*

Quare &c.

**Io:Baptista Bottinius Fisci,& R.C.A.
Aduocatus.**

Illustriſſ. & Reuerendiss. Dno

Vrbis

G VBERNATORE

In Criminalibus

**Romana Homicidiorum
cum qualitate.**

P R O

Fisco.

C O N T R A

D.Guidum Franceschinum,
& Socios.

Replicatio Iuris D.Aduocati Fiscalis.

ROMÆ, Typis R. Cam.Apost.1698.

Romana Homicidiorum cum qualitate.

III. ^{me} Dñc. **D**educta per D. meum Pauperum Aduo-
catum ad defensam D. Guidonis Fran-
ceschini inquisiti de tribus homicidijs cum grauissimis qua-
litatibus eadem extollentibus suadere non valent. Ipsum non
esse ordinaria poena Legis Corneliae de Sicar. plectendum,
quatenus de illis confessus reperiretur, & habenda super ijs
veritate reliquo tormento vigiliz, simplicem torturam esse
irrogandam, ut singulis respondendo, quantum maxima tem-
poris angustia patitur, Fisci partes, ut mei muneris ratio po-
stulat, & criminis atrocitas, & immanitas exposcit, tuendo,
ostendere conabor.

Præcipuum itaque Domini mei assumptum consistit in parifi-
cando casu vindictæ incontinenti per Maritum sumptæ cum
nece Adulteræ in turpitudine depræhensæ, ac eū interuallo
captæ, quoties de adulterio Vxor conuicta reperitur, ut ve-
rificari prætendit in casu nostro, sed illud tam in facto, quam
in lure corruit, et ideo illatio ex eadem paritate desumpta
pro moderatione poenæ pariter insubsistens detegitur.

In facto siquidem prorsus deficit probatio prætensi adulterij ex
latè deductis in alia mea Informatione, in qua singulas eius
præsumptiones, seu potius suspicione ex Processu, ad quem
relatiuè se habet D. meus, resultantes confutaui, ostenden-
do, fugam arreptam per vxorem in societate D. Canonici
Caponiacchi prætensi Amasij ex legitima causa, imminens
vitæ periculum, quod ipsa timebat, non ex illicito libidinis
impulso processisse, quod vtique suadere debet participatio,
et complicitas in eadem promouenda D. Canonici de Co-
mitibus, et D. Gregorij Guillichini affinium Inquisiti, quod
vtique non præstisset, si malum finem violandæ fidei con-
iugaliis in ipsorum quoque dedecus cessisset, sed quia bene
agnoscabant remedij necessitatem, illudque periculo vaca-
re, ut deponit Testis fiscalis de auditu à D. Gregorio in eo-
dem Processu super fuga, ei quoque ad executionem perdu-
cenda suam operam admiscerunt.

Non relevante, quod in Decreto condemnationis eiusdem

A

D. Ca-

D. Canonici ad relegationem in Ciuitate verula inscriptus fuerit titulus carnalis cognitionis , quia , vt fuit præventiuè responsum , demandata fuit illius moderatio , et subrogatio generalis tituli ad Processum relatiui , et cum ex Processu eius indicia non resulant , vel ex defensionibus , quas infelix Vxor cum simplici cautione de habendo Domum pro Carcere dimissa , facere potuisset , nisi aded immaniter necata fuisset , cum d. decretum fuerit emanatum ea non vocata , neque audit a , prorsus elisa remansisset , Inscrip^{tio} facta per Iudicem poenes acta de titulo delicti eius ream efficer non valuit , sed veritas facti ex probationibus relultans est atten-denda , vt per Tex. in l. famosi S. hoc autem erimen ff. ad l. Iul. Maieß. tradunt Mastrill. de indult. gener. cap. 29. num. 19. vers. 3. confirmatur Franc. decis. 330. num. 6. ibique Viscous. in addit. Reuerendiss. Verulan. ad Statut. Fauentin. lib. 4. rubr. 14. num. 14.

Fatetur quidem aliqua excusatione dignum existimandum fore D. Inquisitum , si Vxorem in actu depræhensionis eiusdem in fuga cum prætenso Amasio necasset , cum ad hunc effectum nedum veritas , sed etiam suspicio patrati adulterij sufficiat , vt ex glof. in l. Diuus Adrianus in figurazione Casus ff. ad leg. Pompon. de Paricid. tradit D. meus , sed dum neglecto prætenso Iure priuatae vindictæ , publicam implorauit , illam ar-restari faciendo , vtique amplius non poterat ea manente sub publica Iudicis potestate priuatam vindictam sumere il-lam trucidando nil tale timentem , suspicio siquidem iusti doloris excitatiua , quem temperare difficile est , excusat à quanto , si non à toto , quoties ex inconsulto impetu iræ Maritus vltionem incontinenti sumit , non etiam quando ex interuallo , et causa sub Iudice manente , atque Vxore ad ipsius instantiam carcerata id præstat , vt infrà probabitur , ostendendo irreleviantiam principalis assumpti .

Neque obstat Glaff. in alleg. Tex. in l. Diuus Adrianus , quia loquitur de filio in flagranti adulterio cum Nouerca per Patrem depræhenso , et non ex interuallo per Patrem interfec-to , vt quamplurimis relatis firmat Farinacc. conf. 142. n. 16. & longè diversa est ratio inter Patrem , et Maritum ex inter-uallo occidentem , quia vt subdit ibi Farinacc. num 17. Pa-ter habet in filium maximam potestatem , et antiquo Iure poterat etiam illum occidere ; quam certè non habet Mari-tus

etus , ac etiam lex facilius Patrem excusat , quia semper præsumitur , quod capiat bonum consilium pro filio ex instinctu Paterni amoris , quam confidentiam non habet de Viro , qui facilior esse solet ad concipiendam iniustam suspicionem de Vxore , atque ideo permittendum non est , quod sola suspicione possit illam ex interuallo necare , nec est ob eam nullo modo excusandus , vt considerata ratione adducta per Tex. in l. nec in ea ff. ad leg. Iul. de Adulter. — quia pietas Paterni amoris plerumque Consilium pro liberis capit , Mariti verò calor , & impetus facile se uenit siue refrenandus — tradunt Cruarr. in tit. de Sponsal. & matrim. 2. par. §.7. num. 2. vers. licuit , Decian. tract. crimin. cap. 15. num. 38. in fin. Caball. resol. crimin. easf. 300. num 21.

Quod adeo verum est , vt non aliàs Pater excusetur nisi vna cum adultero ipsa filia occidatur , vel lethaler vulneretur ; vt fato potius quam paternæ indulgentiæ mortem effugisse , tribuendum sit , idque non alià ratione per Legislatores inductum est , nisi quia talis dolor ad iram , inconsultam pronocans ad excusandum Patrem requiritur ut propriæ filia non parcat , quod cum Statutum nullatur per leges de Marito loquentes , manifesta detegitur disparitas inter utrumque ob nimiam facilitatem suspicionem concipiendi , & contrà Vxorem insueundi .

Solumque suspicionem non sufficere ad hoc ut minuatur pena Marito ex interuallo Vxorem occidenti constat ex ipsis authoritatibus illum in tali casu excusantibus , quatenus adulterium sit probatum , vel per confessiones Vxorū , vel alijs probationibus , ita ut de illo conuicta dici valeat , vt tradunt M ascard. de probat. concl. 64. num. 8. & 9. Bertazz. conf. crim. 42. num. 10. Caball. resol. crim. d cas. 300. num. 26. ibi — Vidi in contingentia facti obseruari , & excusari maritum qui Vxorem interfeceras adulteram , non tamen in actibus venereis repertam , sed talem verè , & realiter existentem , & hoc aperiissime probato — Vnde manifestum redditur ex ipsis authoritatibus per D. meum adductis , non excusari Maritum ex interuallo Vxorem occidentem ex sola suspicione , ex Causa super adulterio adhuc sub ludice , quem ipse adiuerat , manente .

A

In

In Iure quoque insubsistens detegitur assumptum parificans vindictam sumptam incontinenti, in actu scilicet depræheasione in adulterio, vel in preparatorijs proximis legitimam suspicionem eiusdem inducentibus, & ex interuallo, quoties de illo constat, & eo quidem probationum genere, quod adulterium aperissimum reddat. Licet enim non defint quamplures Doctores penam minuendam suadentes ex adducta per ipsos ratione, quod Causa honoris semper vrget, & ad vindictam prouocat, & quod satis dicitur in adulterio depræhensa Mulier de illo confessa, vel conuicta, plena manu congesti per D. meum, & quorum aliquo mox ipse indicaui; Tamen contraria opinio est verior, & in praxi recepta, de qua testantur insignes practici nostri temporis, & in re criminali Peritissimi, scilicet Farinacc. dict. conf. in fin., vbi concludit se ita indubitanter de iure credere, consulens ita tenendum esse nisi errare velimus, discretè prius respondendo rationibus, & authoritatibus in contrarium adductis, & D. Canon. Rainald. qui etiam Procuratoris Pauperum munus summa cum laude expleuit, & ideo credi potest quod ad pietatem, & commiserationē fuerit summoperè procliuis, & ex solo veritatis sedande studio huic opinioni adhæserit, quam veriorcm appellat, & magis Reipublicæ proficuum, nec ab ea in iudicando recedendum esse, vt tradit in suis obseruat. crimin. cap. 2. §. 4. num. 155. & cap. 7. in rubr. num. 18. & seqq.

Sed quatenus etiam conflictus autoritatum possit aliquo modo Inquisito suffragare pro minuenda poena, si solus excessus in tempore concurreret, prorsus tamen in excusabilis existimandus est, itaut non valeat poenam ordinariam effugere, dum tot qualitates delictum extollentes concurrunt, quarum unaquaque de per se poena mortis plectenda esset.

In primis quippe considerari ad hunc effectum meretur coadunatio Armatorum perniciosissimum publicæ quieti delictum conuenticulæ constituens, in Bannimentis cap. 82. damnatum poena ultimi supplicij respectu authoris cum declaratione, quod sufficiat quatuor Armatos fuisse congregatos ad illam constituendam, quæ prius fuerat sub cadem

eadem poena prohibita per *Constit. 75. fæl. rec. Sixti V.*
cā extollendo ad crimen rebellionis, ex quacumque cau-
ta fieret, vt latè probat *Spad.conj. 25. per tot. lib.primo*, af-
ferens illam esse generaliter intelligendam in omnibus
casibus, in quibus prohibita coadunatio fieret.

Pro quo effugiendo, vel capitali poena euadenda, non rele-
uat excusatio, quod licitum sit Marito etiam coadunatis
Armatis adulteram Vxorem occidere. Quidquid enim
fit quotiēs Maritus vult occidere Vxorem in Adulterio
depræhensam, quia timere potest, quod Adulter armatus
ei resistere valeat, & forsan habeat in sui auxilium famu-
los, quo casu cum aliter vindictam exequi non valeat,
quam auxiliatores conuocando, vt monet *Caball.dif. cas.*
300.num.58. & 59. vtiquein casu vindictæ sumptæ ex in-
teruallo, manente Vxore sub potestate Iudicis, & vigen-
te sola suspitione adulterij, permissa nullatenus dici po-
test conuocatio armatorumcum *Constit. fæl. rec. Sixti V.*
inter ipsius impressas 75. calem coadunationem prohibeat
etiam in casu licto, ut potest publicæ quietis turbatiuum,
vt disserte probat *Spad.conj. 25. per tot. lib. 1.* Adeoque
multo magis prohibita, & poena ordinaria tam d. Constitu-
tionis, quam dispositionis Bannimentalis expianda, dum
ad finem illicitum, atque damnatum facta fuit, scilicet
occidendi Vxorem, & cum ea Socerum, & Socraram, quod
manifestum redditur ex assertione Doctorum excusant-
ium à poena ordinaria Maritum ex interuallo se vlcisen-
tem; & lane nimis ampla strueretur via priuatæ vindictæ
legibus exolæ, si postquam Maritus elegit viam vindictæ
Iuris, & neglexit prætensam iniuriam vlcisci in actu de-
præhensionis Vxoris in fuga cum prætenso Amasio, excu-
sandus esset illam coadunatis Armatis cum omni securi-
tate ex interuallo sumendo, incautam occidendo sub po-
testate Iudicis manentem absque ullo proprio periculo.

Absque eo quod suffragari possit responsio, quod in tantum
neglexit priuatam vindictam sumere, quia erat inermis, &
Vxor reperiebatur in Societate D. Canonici Viri audacis.
& validi; Quoniam sibi imputare debet Maritus si Vxo-
rem cum Amasio fugientē solus, & inermis fuit persequen-
tus; Tunc enim poterat meliori iure Socios assumere, &

armatus eam persequi, & in tali casu coadunatio forsan esset aliquo modo excusabilis, non etiam ad sumendam ex inter-
vallo adeo immanem vindictam; Quinimò considerata ra-
tione, propter quam Maritus adulterum, vel Vxorem occi-
dens mitiori pæna punitur iuxta qualitatem personarum, si
vltrò in ipso actu sequatur, scilicet inconsulti doloris, qui
temperari non valeat, illicita detegitur coadunatio armato-
rum ad id ex intervallo præstandum, quia inconsultus dolor
efficit, vt ipse exponat discrimini resistentia per Adulterum
facienda, qui non solet inermis accedere, ratione cuius peri-
culi poena minuitur, cum illud ostendat Maritum incaute se
illi exposuisse ex imperio doloris illum execente, quod ve-
rificatur in vendicta ex intervallo cum omnimoda præmedi-
tatione sumpta coadunatis Armatis, vt nihil mali maritus
timere posset sibi carentium ex illius executione, quæ præ-
paratio nimis repugnat inconsulto dolori, qui temperari non
valeat, à quo desumitur excusatio, vt ponderando verba
Textuum iu contrarium adductorum respondet Farin.d.conf.
141.num 9. & seq.

Secunda qualitas delictum extollens resultat ex genere armo-
rum, quibus homicidia patrata fuerunt, cum sint prohibita
in nota Constitutione san. me. Alexandri VIII. nedum quo-
ad delationem, sed etiam quoad retentionem, introduc-
tionem, & fabricatiouem ex quacumque Causa etiam sub præ-
textu militiae, & executionis Iustitiae, adeoque multò magis
ad effectum adeò impiam, & immanem vindictam sumendi,
perdendo integrum familiam.

Nec delationis armorum delictum in tali casu confunditur cum
principali criminis homicidij, quia cum maior poena sit pro
illa imposita, quatenus subsisteret excusatio desumpta ex
causa honoris, punienda venit delatio armorum prohibito-
rum ordinaria pena, vt tradunt Giurb. conf. 26.num. 1. &
conf. 81.num. 41. Caball. caſ. 100.nu. 13. Farin. queſt. 22. n. 22.
& queſt. 108.num. 166. Sanfelic. dec. 43. num. 2. & 3. Non at-
tentis authoritaribus in contrarium adductis, quia proce-
dunt in terminis homicidij facti ad defensionem, vel prouo-
catione in rixa, vt declarat Pollicard. de præhemin. Reg. Aud.
tom. 2. cap. 6. num. 11. & 12. Eçque vñterius non applicantur,
quia non loquuntur in terminis Constitutionis adeò distri-
cti

Qd prohibentis tale genus armorum , nam d. Policardus loquitur de Reg. Pragm. præsumente ex qualitate armorum qualitatem delicti proditorij , cuius dispositionem cessare afferit in homicidio ad defensam , vel ad prouocationem in rixa cum distis armis patrato, quæ dispositio toto cælo distat à nostræ Constitutionis Sanctione , quia edita fuit ad omnino exterminandum adeò perniciosum genus armorum .

Tertia qualitas pariter delictum extollens est homicium patratum ex causa litis , quod ex iota Constitutione fel. rec. Alex. VII. elatum fuit ad crimen rebellionis , & laſæ maiestatis ultimo supplicio , & bonorum confiscatione plectendum , quæ qualitas respectu necis Petri Comparini , & Violantis eius Vxoris controvetti nequit ex eo , quod Inquisitus in lite victoriæ reportasset , adeoque dici debeat partata ob iustum dolorem iniuræ ipsi illata per suppositionum Partus detrectam post celebratum matrimonium , ut dotale Instrumentum infringenter , & per publicationem scripturarum magnam detractionem continentium , ac per conspirationem in fuga Vxoris in perniciem honoris Inquisiti , & totius familiæ , quæ causa vlciscendi iniuriæ cum sit grauior , quam causa litis potius illi tribendum sit homicidium , tanquam isti magis proportionatae .

Quoniam victoria obtenta respiciebat solum possessorum lite adhuc in peritorio maente , quam Parentes prosequi fuissent , adeoque illius causa adhuc durabat , & extincta dici non poterat ; Inuria verò ex qua diuersa causa desumi prætenditur prouenit ex eadem lite , tam circa detectam suppositionem Partus , quam circa detractiones in scripturis contentas respicentes angustiam rei familiaris contra iactatas diuitias , sub quarum ipse contractum fuerat matrimonium , & pessimas tractiones , quas experti fuerunt Parentes Sponsæ in Domo Inquisiti , quibus ex conventione dotali subministranda erant alimenta , cum alias de conspiratione in fuga , minusque de complicitate in prætenso adulterio vlla probatio habeatur . Adeoque semper urgebat causa odij ex lite concepti , quæ non eximit à pena per Alexandrinam Constitutionem inflicta ex quo lis iniuriosa fuerit Inquisito , vel in substantia , vel circa modum , quia hæc arguit quidem Causam , quæ in homici-

micidijs præmeditatibz semper requiritur, non autem qualitatem litis excludit, imò eam confirmat, dum explicitè ortam fuisse iniustitiam supponitur, alias permitteretur aditus vidictam priuatam sumendi, quod omni iure vetum est, & præsertim intercedente lice, quia tunc læditur Maiestas Principis, vt probatum fuit in alia informatione §. Acceder ad exasperandam.

Quarta, & quidem grauissima qualitas desumitur ex circumstantia loci, in quo patratum fuit delictum, scilicet in domo propria eorum, quibus mors illata fuit, & quidem modo insidioso, configendo consignationem Epistolæ à D. Canonico Caponsaccho transmissæ. Domus enim propria tutissimum cuilibet refugium esse debet, vt in alia probatum fuit §. Plunimum quoque. Qui sanè modus proditionem sapit, quæverificatur nedum patrato homicidio sub specie amicitia, sed etiam quoties cessat in Occiso præcauendi potentia vel obligatio, vt tradunt Bart. in l. respiciendum §. Delinquunt ff. de pen. Matth. Sanz. de re crimin. controu. 30. num. 57. Crauett. in Anathom. necis prodit §. 10. num. 5. quæ procul dubio deficiebat in casu nostro, cum miseri Parentes nil tale timere possent ab inquisito in Patria commorante.

Quibus accedit quinta grauissima qualitas pariter desumpta ex circumstantia loci respectu miserrimæ Vxoris, quæ fuerat ad instantiam Inquisiti Carcerata, & cum consensu D. Abbatis eius fratri detenta in domo Parentum loco Carceris, & ierà manebat, sub saceritate publica, quam Inquisito violare nefas erat absque incursu pœnæ læsæ Maiestatis, vt monent Iodoc. in prax. crim cap. 18. num. 2. Bonifat. Vital. de Malefic. rubr. de carcer. priuat. num. 8. Matth. Sanz. contr. 17. num. 12. & seqq.

a que grauissima qualitas delictum extollens euitari non. Istipotest ex duplice responsione per D. meum tradita: Prima quod agatur de carcere impropprio; secunda quod ex iusta causa causa honoris excusat offendere, vel occidens etiam in carcere. Neutra siquidem qualitatem excludit, nam improprietas Carceris forsan esset considerabilis si ageretur de violatione illius facta per Carceratum, & ità de vitando eius præiudicio, secùs dum agitur de illius fauore ad vindicandam iniuriam eidem in domo loco

loco Carceris assignata illatam, causa verò honoris solum
prodefesse posset, si ad illum defendendum in ipso imperio
inconsulti doloris lequeretur offensio in Carcere, in qui-
bus terminis procedere possunt authoritates per D. meum
adductae, non etiam ad excusandam vindictam ex interuallo
sumptam contra Carceratam, & quidem ad instantiam
Occisoris, tunc enim qualitas loci summoperè aggrauat
delictum, vt potè lædens publicam securitatem, & inuo-
luens proditionem, vt in similibus terminis tradit Matth.
Sanz. de re crimin. contr. 33. num. 14. 15. & 16. Caball.
cas. 13. num. 10. Carpzou. part 1. in prax. qu. 40 num. 11.
cum seqq. Quintilian. declam 274. num. 1. & seqq.

Ex his cum abundè constet homicidia per Inquisitum patra-
ta habere admixtas tot qualitates illa extollentes, quate-
nus etiam preponderaret opinio fraudens minuendam esse
poenam Occidenti Adulteram ex interullo, & probatum
dici posset adulterium prætensum eo modo, qui ad talem
minorationem obtinendam requiritur ab omnibus mitio-
ris opinionis Sectatoribus, adhuc eadem propter dd. qua-
litates exasperanda esset, & ordinaria pena *legis Cornelii*
de Sicar. omnino irroganda. Ac propterea superfluum
videtur agere de qualitate tormenti, cum ex notis facultati-
bus Illusterrimo D. Gubernatori concessis, concurren-
tibus urgentissimis indicj, de quibus, vt audio, non du-
bitatur, sufficiat delictum ordinaria pæna plectendum fo-
re, licet qualitas atrocissimi non concurrat, itaut pro eo
non sit exasperanda pena.

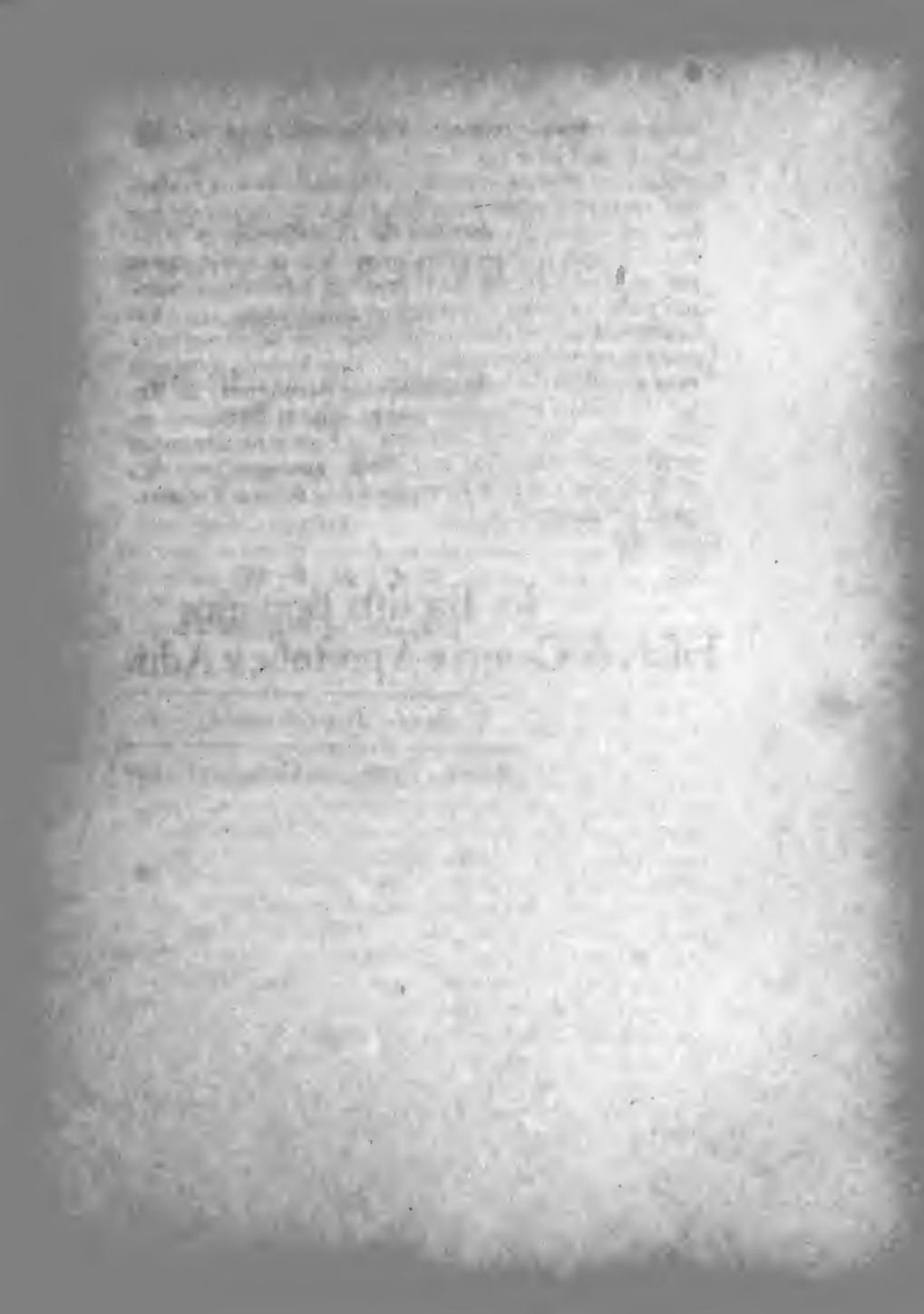
Cæterum nec etiam huiusmodi qualitas deficit, vt potè re-
sultans ex modo proditorio, & ex titulo læsæ Maiestatis
ex triplici Capite in casu nostro verificabili, scilicet of-
fensione **ex causa litis**. coadunatione **Armatorum**, & vio-
latione publicæ securitatis propter assignationem domus
pro carcere; Cum enim per Constitutiones Apostolicas
super primo, & secundo ad talē speciem delictum elati-
um sit, & de potestate Principis id faciendi non sit ambi-
gendum, vt monent *Restaur. Castald. de Imperat. qu. 110.*
cas. 291. & de similibus Constitutionibus Spad. consil. 1.
num. 34. afferens in tali casu illud quoad omnes Iuris effe-
ctus tale reputari non est incontroversiam revocanda qua-
litas atrocissimi tali delicto conueniens, vt in præcisis ter-
mi-

mis pro irrogando termeoto Vigiliæ tradit Spad. conf. i. 14.
num. 14. & 15. lib. 1.

Qualitas verò personæ noo permittens penam mortis exasperari , vt in criminibus atrocissimis contingere solet ob nobilitatem , non denigrandam ex tali exasperatione infamiam irrogante, quatenus etiam verificaretur, non obstat , quo minus ad vigiliæ tormentum inferendum deueniri posset , cum ad hunc esse&um sola criminis ratio habeatur non attenta qualitate personæ penè infamiam inferentis exequitionem impidente , alias Nobiles nunquam exponi possent tormento vigilie, nec Sacerdotes , & Religiosi , quibus infamia pæna non infligitur. Nobilitas autem nullum priuilegium tribuit in genere tormentorum præsertim in criminibus atrocissimis , vt monet Garz. de Nobilit. gloss. i. n. 17. & de consuetudine testatur Farinacc. queß. 41. num. 76. & seqq.

Quare &c.

Io. Baptista Bottinius
Fisci , & Cameræ Apostolicæ Adu.



*Illustriſt. & Reuerendiss. Domino
GVBERNATORE
In Criminalibus.*

**Romana Homicidiorum
cum qualitate,**

P R O

Fisco.

C O N T R A

D. Guidonem Francischinum,
& alios.

Responſo D. Aduocati Fiftalis.

Romæ , Typis Reu. Cam. Apost. 1698.

R I S P O S T A

Alle notizie di fatto , e di ragioni nella Causa Franceschini .



Addel bellissima Statua di Nabuedono-
for perche *pedibus non regebatur* così à pun-
to precipitarono li figurati estorti supposti
co' quali lo scrittore anonimo in fogli im-
pressi cerca d'insinuare nel rozzo intelletto
del volgo l'origine dell'esecrando eccidio
commesso dentro Roma di tre miseri inno-
centi da Guido Franceschini assistito da
quattro huomini armati d'armi prohibite à tal'effetto con de-
nari condotti , & à sue spese per più giorni mantenuti con
preparate insidie prouenire dal giusto dolore concepito , allo-
ra che si vidde per otto mesi auanti mancarsi nella propria
Casa in Arezzo Francesca Pompilia sua Moglie , e fuggita in
Compagnia del Canonico Caponsacchi dal medemo luogo
per ricouerarsi in Roma sotto il patrocinio di Pietro , e Vio-
lante coniugi de Comparini , che come figlia l'hauemano al-
leuata , e dal sospetto cresciutogli , che nel viaggio precipito-
so hauesse con esfo rotte le leggi maritali per esserglisi trouate
appreso alcune lettere amorose , dalle quali ne deduceua ir-
ragioneuolmente l'adulterio di quella , e con presupporre , che
come adultero nè fosse detto Caponsacchi condannato all'
relegazione di tre anni in Ciuità Vecchia ; per potere con
questo mascherato titolo d'onore render men graue il delit-
to , e d'eccitare la compassione non meno nelle persone idio-
te , che nell'animo de Religiosissimi Giudici per disporli ad
una pena più mite , e non corrispondente secondo la legge
alla qualità , forme , e circostanze del delitto , e questo in so-
stanza , è tuttociò che si pretende dall'autore de fogli stampa-
ti intitolati notizie di fatto , e di ragioni nella Causa Frances-
chini , mà però troppo mancheuoli nel racconto della tragica
Istoria , che hà diuerso principio , e cagione independente dal
colorito titolo d'onore , che in essi vien troppo animosamente

A

sup-

supposto esserli stato tolto dalla Moglie, mentre questa ha sempre intatta conservata la sua pudicizia, e ben custodite le leggi dell'onestà coniugale, come evidentemente si mostra in appresso.

Che la dolorosa Catastrofe dell'eccidio di questa intiera Famiglia non sia proceduta come l'Anonimo Scrittore diuulgò nelle sue stampe dalla figurata causa d'onore, mà da vn danzato interesse ben può dimostrarsi col riflesso, che à quest'oggetto s'introdusse dal Franceschino l'infarto tractato de Sponsali, con detta Francesca Pompilia, accerratosi, che doppo la morte de suoi Genitori gli dovesse restare vn'molto considerabile valescere, e più tosto deve credersi commessa in odio di tre liti pendenti cioè due Civili vna sopra la figlia Janza legittima di sua Moglie, e nullità di costituzione di Dotte, nel Tribunale della Sacra Rota introdotta da Pietro, l'altra sopra la separazione del Toro auanti Monsignor Vicegerente introdotta da detta Francesca Pompilia, e la terza Criminale in decisa pendente nel Tribunale di Monsignor Illustrissimo Gouernatore in ordine al preteso adulterio mossa coll'istesso stimolo dell'interesse per guadagnare l'intierodote, quando quello fosse stato concludentemente prouato in esso introdotta da detto Franceschini, la qual speranza essendo rimasta delusa per mancanza delle prove, che saranno del tutto suanite colle difese, che poteuano farsi dalla Moglie proruppe in un eccesso così tragico, e deplorabile, che ben scoperse le frodi, e l'ingāni adoprati per far fortire il detromatrimonio e che ciò sia il vero eccone pronte le dimostrazioni,

Se ne stava ozioso in Roma Guido Franceschini fuori del seruizio di vn porporato, col soldo dal quale somministratoli fino allora si era mantenuto, & il suo più frequente mantenimento era in una Bottega di alcune Donne Peruchiere, doue più volte fattosi intendere essere la sua intentione d'accassarsi con qualche buona dore vantando le grandezze della sua Patria, de suoi natali, e delle sue sostanze d'ispose la medesima con promesse à proccaciarne l'occasione, e scoperto di esservi questa di detta Francesca Pompilia allora stimata figlia legittima, e naturale di Pietro, e Violante Coniugi de Comparini se ne accinse esso medesimo coll'aiuto dell'Abbate Paolo suo Fratello all'impresa, & usando l'astuta prudenza, della quale si seruì il maligno Serpente allorché nel Para-

Paradiso Terrestre per fornirtire Adamo à trasgredire il Precepto, e mangiare del Pomo vietato facendo li suoi conti, se io vò direttamente ad assaltare l'Vomo, egli come assai forte, assai risoluto mi verrà a dar di sicuro la ripulsa, meglio dunque è, che io tenti prima la Donna, che è di natura mobile, e di cuore molle, e però diede il primo assalto ad Eva, perchè poi guadagnata, che hauesse quella per mezzo di essa li sarebbe stato più facile l'acquisto di Adamo: *primorum enim amum sexus mollioris aggressus est*, sono parole ingegnose di S. Ilario.

Così à punto diuiso il detto Guido coll'intelligenza dell'Abbate Paolo suo fratello, e così à punto gli riuscì, mentre tralasciando di discorrere di detto Matrimonio cō Pietro, dal quale probabilmente haueua hauuta la negatiua, volle prima tentare Violante sua moglie, perchè coll'acquisto di essa hauerebbe poi con più facilità souertito il Marito à prestarui il consenso, ne gli fù difficile sorprendere la Donea, peroche seppé così bene imprimergli nell'animo le grandezze della sua Patria, la nobiltà primaria de suoi natali, e le grosse rendite de suoi beni patrimoniali sino alla somma di scudi 1700., con lasciargliene nota scritta di proprio pugno; che essa ne restò incantata, e senza prendere altra informazione si pose à sconuolgere il Marito con riauarne da lui il consenso, avverando quello si legge scritto ne Proverbij, *malier Viri pretissam animam capite*, quando si disse di Mardoncheo, che si vallesse d'Ester, quando egli volle placare lo sdegno d'Assuero con il Popolo, e di Giabbe, che si seruisse della Tecuite, quando egli volle addolcire l'ira di Davide col figliolo, e de Filistei della Tannatese, quando essi vollero ricanare da Sansone lo scioglimento del problema da lui proposto nel Convito nuziale.

La credula, ma ingannata Donna tanto adoprossi col marito, che in fine lo ridusse à sottracciure li capitoli matrimoniali con la costituzione della dote di luoghi 26. di monti, & alla morte di detti Coniugi Compartini di tutto il loro hauere ascendente, come confessa l'anonimo Scrittore, sino alla somma di sc. 12. mila, e per rendersi li dd. Franceschini Padro ancora in loro vita di detto valsente si fecero cedere l'*ufs* ⁿⁱ frutto d'esso consistente tutto in corpi frutti feri di case po in ottimo sito, & in luoghi di monti, col peso però di co-

durre detti Coniugi Comparini alla Città d'Arezzo , & iui alimentarli , vestirli . e souuenirli di seruitio in ciò che fusse stato loro dibisogno, la qual promessa non era disgiunta dalla speranza, che con disgusti , e patimenti, che faria loro convenuto di soffrire restasse accelerata la morte , & esso diuenisse Padrone assoluto del loro hauere.

E quantunque Pietro doppo sottoscritti li detti Capitoli , fortemente ricusasse di venire all'effettuazione del matrimonio di detta Francesca Pompilia con il sudetto Guido, di cui poche buone relationi hauera haute assai differenti dalle presupposte ricchezze , e dalle vantate qualità riguardeuoli, onde si poteua ben dire di lui ciò , che conclude Persio nella 4. Satira , *Respicere quod non est tollas sua munera Credo , Tocum habita , et noris quoniam sit tibi curta supplex.*

Ad ogni modo il sudetto Guido vnitosi con detta Violante imbeuta delle sue lusinghe , e carezze , sprezzando ogn'alro consenso di Pietro di nascosto del medemo , e senza sua saputa contrasse il Matrimonio in faciem Ecclesiaz con detta Francesca Pompilia , scoprendo sempre più con detto atto poco ruerente verso il Promissore della dote la sua avidità non solo à quella quantità , che gl'era stata assegnata in dd. Capitoli, ma anco al resto de beni, che Pietro possedeva, tenendo per certo , che doppo la di lui morte necessariamente doveuano per fidei commisso d'Antenati colare in detta Francesca Pompilia , già fatta sua Sposa.

Riappatosi doppo qualche giorno da Pietro lo Sposalito seguito ancorche vigorosamente riprouasse l'operato; tuttavia , perche factum infectum fieri non potest per le lusinghe di Violante sua Moglie , e per l'interpositione d'altro Porporato , al quale seruiva l'Abbate Fratello di Guido . fù il pouero Vecchio costretto à bevere il Calice delle sue amarezze venendo quasi forzatamente dopo molti Mesi alla stipulatione dell'Instromento Dotale, & in vn subito cominciò à prouare gli effetti dell'inganno del Francelchini, mentre ne anco per fare le prime spese dello Sposalito hauera vn'soldo del proprio, in modo , che per supplire alle medeme, fù di mestiere contro la voglia di Pietro liberare dal vincolo del fideicommissio cinque luoghi, e più di Monti , con mandato del Signor Auditore di Monsignor Illustriss. Gouernatore , e venderli per com-

compreſalle medeme , onde chiaramente ſi vede, che il pri
mario oggetto , che ſi è haouto dal Franceschini ſu questa
pratica è ſtato d'ingannar , tanto Pietro , come Violante
ſua Moglie , e la Pouera Figlia per farſi ricco con la roba
altrui.

Ne può più negarſi la fraudolenta ſuppoſitione delle vantate
ricchezze del Franceschini con detta nota di ſua mano ſcrit-
ta , e confegnata al Comparini , perche oltre che lo confessa
apertamente lo ſcrittore anonimo , mentre per ſaluare la
complicità nell' ingantuo anco dell' Abbate Paolo , figura ,
che queſto riprendeffe alſpramente Guido ſuo frate lo dell'
alteratione di detta nota , ben preſto la ſperimentarono detti
Coniugi Comparini, all'hor che traſferititi alla Città d'Arez-
zo , ritrouarono eſſer molto angusto l'hauere della Caſa
Franceschini , e furono tali le miserie , che conuenne loro ſo-
ffrire , e li ſtrapazzi ſi nel vitto , come nell'aspre poceudre con
elli uſate , e conſtrignerli anco con ſerrari fuori di Caſa , ri-
courarſi nell' Oſteria per albergo , con oggetto d'abbreuiare
loro la vita , ò per li patimenti , ò per la rabbia da eſſi cagio-
nata , che furono coſtretti doppo pochi mesi à ritornare in
Roma , e più evidentemente reſta prouato dalle fedi de Ca-
taſtri eſtratte da publici libri della Città d'Arezzo , dalle qua-
li riſulta , che detto Guido non poſſiede nè pure un'ſoldo de
beni ſtabili eſpreſſi in detta nota , come pure non eſſer vero
goder eſſo , e la ſua famiglia il primario ordine della nobiltà
della ſua Patria , atteſo , che da altre Partite eſtratte da publi-
ci libri di detta Città , ſi vede , che la ſua famiglia è riportata
nel ſecondo ordine .

Le ſudette forme dolose , e fraudolenti di trattare , poste in lu-
ce molto prima , che ſeguiffel'eccidio , e publicate in questa
Corte , & in Arezzo , poſſono ben dirſi eſſer ſtata l'origine
della premeditata ſtrage con modi così detestabili , com'è
notorio , e non il colorato titolo d'onore ; mentre degne loro
frodi , come ſopra diuolgatε , operarono nel commun' con-
cetto d'efſer non meno l'Abbate Paolo , che il detto Guido
ſuo fratello , ſtimati per huomini di raggiro , e d'inganno ,
che ad eſſi ſi rendeua più ſenſibile , che ogn'altra coſa , atte-
ſo , che non poteuano più vantare quelle grandezze di nobil-
tā , e quelle affluenze di ricchezza , che eſſi diſeminare ha-
ueuano nelle bocche del volgo , & ogn'uno ſi guardaua dal
trattar con loro come ſoggetti di fede non ſincera , e come

**vforatori di quelle glorie : che per niun' dritto erano loro
douute .**

Maggiormente s'accese la cupidigia dell' interesse all' hora ,
che si vidde auverarsi ne fratelli Franceschini l'affloma com-
mune *ars deluditur arte* , cioè à dire , che stimolata dal rimor-
so della coscienza Violante , e dalli strapazzi , & ingiurie
riceuute in loro Casa , constretta per commando del Confessore
re in occasione del Giubileo à rivelare à Pietro suo marito
non esser detta Francesca Pompilia loro figlia , mà d'essere vn'
parco supposto , il che si scuopriua molto verisimile sì per l'età
d'anni 48. che correua Violante quando si finse di lui grau-
da ; sì perchè in anni 14. , che haueua vissuto in legitimo ma-
trimonio con esso , mai haueua hauiti figlioli ; sì anco perchè
da Testimonij all' hora viventi si poteua hauere la proua con-
cludente della suppositione di detto parco , e di ciò datane
notitia al medesimo Paolo per venire à qualche aggiustamen-
to sopra la retrattione della constitutione della dote di tutto
il suo valsentile patrimoniale , egli sprezzandu l'amicheuoli
offerte fare per mezzo di persone amoreuoli , ricusò ogni
partito d'accordo , onde intimatogli da Pietro il monitorio
sopra la suppositione di detto parco , e nullità di constitutio-
ne di dote quanti Testimonij Tomati , e fatta concludente proua
con sei Testimonij esaminati con gl' Interrogatorij dati per
parte di detti Franceschini , benchè il medesimo Giudice
fusse di parere spedire la Causa nel solo sommariissimo pos-
sessorio , con concedere la manutentione à detta Francesca
Pompilia in quasi possessione filiationis , nientedimeno fù dal-
la di lui sentenza interposta l'appellatione , e commessa alla
Sac Rota Ponente Monsignor Molines , oue ancq' pende in-
decisa sopra il principale punto della supposta figliolanza ,
e nullità di constitutione di Dote , dal rectissimo giudicio di
tanto Tribunale senza dubbio attese le concludentissime proue
suderte della suppositione del parco , si sarebbe decisa nono-
meno la nullità della constitutione di detta Dote , che fatta
dichiaratione esser detta Francesca Pompilia di loro figlia
supposta , con che veniva à cessare quel vantaggio , che con-
tanto inganno li Franceschini haueuano procurato à loro
commodo .

Si comproua tutto ciò con il ristesso , che publicatosi non meno
in Roma , che in Arezzo l'inganno del Franceschini , deluso
con

con simile artificio per le proue già fatte nella pendenza di
di detto giuditio, che detta Francesca Pompilia non era figlia
legitima, e naturale di detti Coniugi Comparini sotto me-
dicati sospetti affettava Guido la causa di maltrattarla con
ingiurie, & percosse, e più d'una volta s'accinse con ferro, &
armi da fuoco per toglierli la vita per vindicarsi contro di
essa dell'inganno proprio, dal quale restava deluso, onde
conuenne alla pouera moglie in età tenera all' hora di sedici
anni, in Paese straniero, per evitare la fierezza del marito in
diversi tempi fuggirsene all'Aflio di Monsignor Vescovo, e
del Gouernatore, o Commissario della Città, perche pones-
sero freno alli strapazzi, che soffriva, e benche li medesimi
con il loro zelo per all' hora procurassero, che fosse data qual'
che tregua alle minaccie tuttaua la pouera Moglie intimori-
ta passava li suoi giorni racchiusa dentro una stanza, e mag-
giornemente crebbe il timore, perche si auuidde, che il detto
Guido haueua fatto preparazione d'acqueta con la quale
pretendeva toglierli la vita senza strepito d'armi, & esser più
sicuro di far rimanere impunito il delitto. Hor se dunque in
questo tempo, ove no cadeua alcun'ombra di sospetto d'ho-
nore, il Marito machinava la morte della Moglie, poteua aske-
narsi l'Anonimo Scrittore d'imbrattare le carte à fine di per-
suadere, che la strage dell'Occiso habbia hauta la sua origi-
ne dallo stimolo di riparare l'offeso honore. Meglio assai
più hauerebbe fondate le sue stampre, se si fosse consultato
con il vero, che questa sia proceduta dall' interesse de-
luso.

Agitata dalle raccontate angustie se ne stava la pouera moglie
meditando di raccogliere lo scampo della temuta morte; &
aperto segli l'intelletto dalla vessatione, si raccomandò al Si-
gnor Canonico Conti strettissimo congiunto del Franceschi-
ni e sponendogli le sue miserie, li suoi pericoli, li suoi giusti
timori, ancor che ad cesso non ignoti, perche procurasse di
consolarla con metterla in saluo della sua vita, & egli tocca-
to da viua compassione, e mosso à pietà per lo stato lagrima-
uole, nel quale ella si trouava per èsimerla, dal quale ben
conosceva non esserui altro scampo, che la fuga dalla Corte
del marito, appigliandosi al detto del Poeta *Heu fuge crudelis terras, fuge littus auarum*, mà non potendo in ciò egli me-
desimo darle aiuto, le suggerì, che non vi era per ciò esegui-

re persona più al proposito del Sig. Canonico Giuseppe Caponzacchi suo amico, & anco attinente il di cui spirito haurebbe superato ogni cimento, e con esso parlatone il Conti, con tutto che trouasse difficoltà in secondare il desiderio della giouine, per non incorrere l'indignatione de' Franceschini, tuttavia preualse in lui lo stimolo della carità, e pietà di sottrarre dalla morte vna innocente Donna, e riferitale dal Conti l'applicatione di quello all'impresa non mancò la medema infiammarlo con più sue imbasciate, lettere contentenenti anche vezzi allecretivi all'effettuation del suo scampo, conferuando però anche in essa la costante volontà di non violare la fede maritale, mentre in alcune loda il medesimo Canonico per la sua castità, & in altre lo rimprovera per haverle mandate alcune ottime poco oneste, auvertendolo di non degenerare dal contegno, del quale si pregiaua, e concertauasi con quello la fuga, mentre il marito e tutti di sua casa dormiuano, si posero ambedue con l'assistenza di d. Canonico Conti a vn precipitoso viaggio per le poste senza perdere un momento di tempo se non quanto occorreua per la mutatione de' Cavalli, & arruati di notte a Castelnouo, ancorche l'Oste hauesse preparato vn letto da riposo, niente dimeno d'esso non se ne seruirono, perche il Caponzacchi accudì sempre in sollecitare il Vetturino a preparare altri Cavalli per proseguire, e terminare il viaggio, nè l'Oste dì dì luogo esaminato nel Processo sopra la fuga si sognò mai di deporre, che nel letto apparecchiato dormissero insieme la Donna, & il Caponzacchi, benche con suo dishonore il Franceschini habbia publicato il contrario, per colorire colla supposta causa dell'onore la vera cagione della strage da lui commessa.

Sopragiunse in tanto il marito Franceschini, e vedutosi dalla moglie, forsi questa timida, si ritirò, si nascose come rea d'alcun mancamento commesso, d'alcun torto fattogli nel custodire il candore della sua pudicitia? nò; mà ardita ancorche in età tenera già riferita d'anni 16. gli rimproverò la constanza del suo onore, gli inganni, e strapazzi, che gli ha ueua vlati, le minaccie accompagnate colle percosse, più volte dateeli li veleni, & acqueette preparate per toglierla di vita, e che perciò era stata constretta à quella resolutione di procurare colla fuga lo scampo da maggiori pericoli, con-

ricorrere alla pietà di dd. coniugi Comparini, che come loro figlia l'haueuano alleuata, custodendo però sempre intatte le leggi coniugali, e l'istesso rimprovero fù fatto dal Canonico, il quale hauua nella fuga religiosamente osservate le misure d'vna douea modestia.

Che rispose, che tenè il Franceschini, ancorche armato di spada, alla moglie inerme, & al Caponzacchi, che non haueuaseco, che vn piccolo spadino? Niente al certo, secondo che deposero li Testimonij, che si trouorno presenti, perche restò dalle giuste rimostranze della moglie conuinto; Ma che oprò è Derelitta ogni vendetta, che per dritto di legge naturale, o anco civile molto meglio competergli poteua di quello, che vada l'Anonimo Scrittore vantando in discolpa di così esecrando delitto, implorò il braccio della giustitia, facendo arrestare dalla Corte di quel luogo la moglie, & il detto Caponzacchi, che poi à sua instanza furono condotti prigionì nelle Carceri di Monsignor Illustrissimo Gouvernatore di Roma, auanti di cui querelò li medemi della fuga, e poi non contento, espone altra querela di supposto adulterio commesso condetto Caponzacchi, s'avanzò anche maggiormente con fare strepitoso ricorso al Sommo Pontefice per il castigo di quelli, è rimesse le sue suppliche all'istesso Mons. Gouvernatore, ardi con nuova querela domandare, che fusse la moglie dichiarata adultera, e che a lui si douesse secondo le leggi il guadagno di tutta la dote, il che io sostanza ben fà conoscere, che non infisteua per la riparatione dell'onore, del quale hauua trascurata la vendetta, ma tutto si operava per solo oggetto dell'interesse, cioè di guadagnare la Dote.

Quali tentatiui, quali esclamationi, quali diligenze non hâ adoprato il Franceschini, e l'Abbate Paolo suo Fratello per far dichiarare adultera la moglie, e conseguite il lucro bramato? Sallo Monsignor Illustrissimo Gouvernatore, che con tanta sofferenza sostenne le loro appassionate premure. Sallo il Sig. Venturini Giudice della Causa, e lo fanno bene anco tutti gli altri Giudici, e Notari del Tribunale, che nauiscati erano dalle loro importunità. Iodi perche la giustizia non poteua in verun conto colpire a loro disegni, mentre dal Processo non costaua d'alcun reato della moglie, nè dal detto Caponzachi, arbitrando rigorosamente nel prudentiale.

Li Religiosissimi Giudici più per dare qualchè sodisfazione
agli Fratelli Franceschini nelle loro premurose istanze, che
per dritto di giustitia diedero vna relegatione di tre anni à
Ciuita vecchia al detto Caponzacchi, che prontamente obe-
dì senza essersi mai partito dal luogo destinatogli ; e rimanendo
anco indecisa la Causa rispetto alla Donna, che loco
Carceris era stata collocata nel Monastero delle Scalette,
dubitandosi della sua gravidaanza con altrettanta prudenza,
sù quella d'ordine di Mons. Illustrissimo Gouernatore levata
dal Monasterio, non comportando il decoro, che dentro di
esso partorisce, e riposta con il consenso di detto Abbate
Paolo in Casa di dd. Coniugi Comparini con la sicurtà di
sc. 300. d'hauer quella per sicuro carcere.

Con troppa animosità sú questo punto ridarguisce il detto
Scrittore Anonimo quello, che dottamente scrisse Monsignor
Fiscale, non esservi interuenuto il consenso di detto Abbate
Paolo, essendo, come ad ogn'uno è nota la di lui somma, &
incorrotta integrità, di non seruirsi di parola nel suo scriue-
re della quale non gli consti con proua, più che sicura, co-
me evidentemente gli constua il fatto di detto consenso,
mentre l'Abbate Paolo alla presenza propria così restò d'accordo
con Mons. Illustrissimo Gouernatore, e col Sig. Ven-
turini Giudice unitamente, con esigere l'obligo di Pietro
Comparini di somministrare gli alimenti senza speranza di
recuperarli, come fù eseguito con detto concerto, non meri-
tando la loro qualità vn rimprovero così indecente per esser
stati troppo indulgenti con essi.

Con altrettanta animosità si nega non hauer detto Abate Pa-
olo mandato di Procura sufficiente da Guido suo Fratello di
prestare simile consenso, perchè in prendere detta prouisio-
ne Mons. Gouernatore non haueua di bisogno di consenso
delle Parti, e se hâ voluto vsare con esso vn'atto di conue-
nienza, & urbanità, non doveua a questo lo Scrittore corri-
spondere con tanta inciuità di ridarguirlo di mal fatto per
maneanza di sua procura, venendosi con tal procedure a
canonizargli da se medesimo, che hâ voluto anco ingannare
Mons. Gouernatore in acconsentire ad vna cosa, che non
haueua in facoltà di fare, mà ne restâ conuinto, perchè d.
Abbate Paolo era il manipolatore di tutti gl'Atti che si face-
vano, nè si moneua vna paglia senza la sua assistenza, & esso
era ben prouisto di più mandati di procura del Fratello, dalli
qua-

quali risulta vn'ampissima facoltà d'operare, come che fusse la persona propria del Fratello, con la clausola de rato, della quale ogn'uno sà l'efficacia; E ciò si confessò anche dall'Anonimo, mentre afferisce, che Guido nella sua partenza lasciò appoggiata tutta la còdotta della Causa all'Abbate suo Fratello. Ma ben si conosce con quale oggetto si neghi detto consenso, cioè per potere più animosamente figurare la complicità de'coniugi Comparini alla pretesa di s'onestà di Francesca da loro custodita come figlia, la quale si redeva troppo inuerisimile, ammettendo il detto consenso dell'Abbate. Non meno animosa è l'affirzione fatta dall'Anonimo, che per pagare gli alimenti somministrati alla Donna, quando stava nel Conservatorio fosse il denaro sborzato dal Lamparelli, il quale non restasse reintegrato dal Deposito esistente nell'Officio, il quale proueniva dalle monete ritrovate appresso la medesima, ed il Caponzacchi, quando furono arrestati in Castel nouo, che si supponevano tolte al marito, mentre li sc. 48, in circa, che la Donna confessò d'haver portati del suo, sono stati intieramente restituiti a d. Abbate Paolo, come costa per sua quietanza fatta negl'Atti, essendo che gli altri fu concludentemente prouato essere di d. Caponzacchi, e subito, che d. Abbate Paolo ebbe ricevuto d. denaro, per il quale continuamente instigava, se ne parti di Roma per esser a còcertare la notoria strage, che ne seguì poco dopo. Era però prima preceduto il monitorio ad istanza di d. Francesca Pompilia avanti Mons. Vicegerente sopra la separazione del toro, & assicurazione della dote sborzata, che maggiormente afflisce li Franceschini, perché in esso giudizio si farebbero fatte concludentissime prove dell'i loro inganni, delle seutie, delle minaccie, degli veleni, & acquette preparate, dalle quali non n'è restato digiuno d. Canonico Conti, che fu mediatore della fuga, essendo publica voce, e fama in Arezzo, che circa vn mese fa morisse di simil sospetto con che veniva a cessare tutta la speranza, che fin da principio hauevano concepita del guadagno di tutta la roba del Comparini; Onde ogni sano intelletto ben vede, e ben conosce qual sia la vera radice di così temerarij, e lagrimevoli ecclij, o la causa d'onore, o la scandalosa, e detestabile cupidigia, & avidità dalla quale naeque l'odio delle liti mosse, & indecise pendeati, che erano per riuscire di maggiore opprobrio di dd. Franceschini, decise che fussero a lor danno.

In

In vano perciò s'affatigano tanto lo Scrittore, come anco gli altri suoi Difensori ad esagerare la causa dell'honore, mentre quando anco questo gli fosse stato tolto dalla moglie, che non ha veruna sostanza, come pienamente è stato dimostrato nelle Scritture fatte per parte del Fisco, ritorcendo le medesime lettere, dalle quali si desume la proua più rilevante in contrario hâ il Franceschini col proprio fatto rinunciato al diritto di ripararlo, all' hora che non lo vendicò quando la sopragiunse nella detta Osteria di Castel nouo, non gioiandogli la scusa d'esser esso inermi, perché feco hauera pure la spada, e forsi altre armi di nascosto, non essendo verisimile, che si volesse porre ad inseguire la moglie accompagnata dal Caponzacchi, senza esserne prouisto, tanto più, che li fuggitiui erano ancor essi inermi, e solo forniti d'un piccolo spadino, e più tosto volle eleggere la strada giudiciale con farli arrestar da sbirri, e pofta porgerne contro d'essi querela per il castigo, con implorare anche il rescritto del supremo Pontefice, rimettendo le sue suppliche alli Giudici della causa, avanti li quali (ilche ben discuopre l'intentione del medesimo, essendo mortuo del tutto insuperabile) specialmente fece istanza giudiciale del pagamento del prezzo dell'honore supposto tolto, e si dichiarasse hauer egli per l'adulterio della moglie superlucrata la dote? se dunque in giudicio hâ domandato il prezzo del suo honore, come può dirsi, che per honore gli fosse lecito di commettere sì enormi occidij?

Atteso, che quantunque fosse stato lecito al marito per causa di honore di occidere la moglie per ragione di legge naturale, ò sia anco ciuile, cessa questa potenza, e facoltà, quando il marito vi hâ rinuntiato con implorare come sopra il braccio della giustitia, come lo dimostrano le querele esposte, il ricorso fatto al Papa, il premio domandato del suo honore, con le quali giudiciali istanze senza dubbio hâ hauuto per derelitta la vendetta priuata dell'honore, che gli poteua competere, e per vna tacita rinunzia restò quella estinta, come dottamente insegnà il Prob. ad Monach. in cap. licet Clerici num. 7. & seq. de Cleric. coniug. e per il testo espresso in cap. ex ore sedentis S. quia verò de his, que sunt à maior. part. capit. non potendosi ammettere, che l'attione giudiciale intentata dal Franceschini non fosse per operare la rinuntia alla vendetta del

del suo honore, mà gli fosse permesso praticare l'una, e l'altra, e servirsi di quell'azione, che miglior gli fosse parsa, perche ciò è contro il Testo espresso nel cap. *ut qui duas de elect.* in 6., il quale viene così sommato del celebre Canonista Gio: Andrea ibi, *non potest electus duas electiones prosequi petendo confirmationem ex illis, etiam si protestetur se contentum altera, per quam possit consequi sua intentionis effectum,* neccesse ergo habet alteram eligere, qua electa, ad alteram redire non poterit, e più chiare sono le parole dell'istesso Testo ibi, *Regressus ad aliam, cui per electionem alterius renunciare, sibi ius ex ea non competere profiteri videtur, nullatenus babiturum.*

Mà quando anche potesse giudicarsi permessa questa variazione da ogni legge abortita, ne restarebbe destrutto ogni fondamento per la mancanza totale della proua dell'offesa riceuuta nell'honore, non essendouene alcuna nel processo fabricato sopra la fuga; e se bene s'ingegna l'anonymo Scrittore desumerla dalle pretese lettere amorose scritte al Caponzacchi, le quali essendo da Francesca state negate, e non trovandosi riconosciute per scritte di suo carattere, nè di suo consenso, ò da lei sottoscritte, non puote asserti, che ne resti conuinta, nè da esse può risultare proua legitima, come insegnava ogni giuridica pratica.

E quando anche fuori di ragione si douessero ammettere come scritte dalla medema, troppo animosa, ed irragioneuole sarebbe l'illazione, che da esse ne risulti vn'attione al marito di occiderla per hauer così scritto? Nivno di sano intelletto resterà persuaso à cōpassionare il marito, che ha proceduto all'occisione della moglie con il solo motiuo, che questa habbia scritto viglietti amorosi, mentre nè con la carta, nè con la penna restò offeso l'honore Coniugale, mà solo con atti d'im-pura dishonestà, de quali nel caso nostro, ne manca ogn'ombra di proua.

Tanto più che ne cessa anche il solo sospetto col riflesso al vero motiuo, col quale furono scritti, cioè d'adescare con simulati dimostrazioni d'affetto il Caponzacchi à sottrarla dall'imminente pericolo della morre, dalla quale non trouava altro scampo, che con la fuga, hauendone sempre presente lo spavento per lo sdegno, & odio concepito dal marito per le cause

se accennate, e perciò procedendo da detta cagione le lettere amoroſe, deuono riferiſi à quella, e non à diſonesta voglia di macchiare la fede coniugale del marito , come ſimilmente à detta cauſa duee riferiſi forſi qualche colloquio, che dalle fineſtre haueſſe hauuto con detto Caponzacchi per concer- tare il modo di mettere in faluo la vita, e non per offendere, ò cimentare la ſua pudicitia, e l'honore del marito, onde anco caſtiffime Donne ſi ſono ſeruite di ſimiſi arti, leggendosi nel- le ſacre Carte , che Giuditta nelle medefime forme ingannò Holoferne per ottenere la liberazione della ſua Patria, e coſì non meno potè eſſer lecito à queſta pouera Donna vni- calemente intenta alla ſicurezza della ſua vita, ad eſſcare con let- tere amatorie il Caponzacchi ad eſſergii ſicuro compagno nella ſua fuga feñz'alcuna taccia d'inhonesta.

Molto meno può ricauarſi l'oſſeſa dell'honore dall'ijteſſa fuga , perche come ſi oſſeruò di ſopra, queſto ſegui per detta cauſa, e chiaramente ſi vede , che non fu per fare alcun torto al marito, mentre non deuiendo in paſſe ſconosciuto, precipitoſamente per ſtrade conſolari in poſta, e ſenza pernottare in verun luogo ſi portorno ambedui in Roma, oue la pouera Donna ſperaua , che li Comparini, che l'haueuano alleuata, come loro figlia, gli haueſſero continuati quegli atti di cari- tà, co' quali l'haueuano cresciuta ſino al doloroſo matrimo- nio con il Franceschini contratto . E tutto che ſi vā diſfemi- nando, che vn Vetturino deponga d'hauerli veduti baciare, per ſtrada , non ha alcun fondamento giuridico, non ſolo per eſſer Testimonia ſiſiſimo, & vniſo, e deponere di coſe inue- riſimi, perche douendo eſſo guidare il Caleſſe con quel corſo veloce, col quale li fuggitiui proſeguirono il viaggio , rendeuati ad eſſo quaſi imposſibile il riguardare à dietro , & oſſeruare dentro vn Caleſſe coperto quello, che eglino ope- rauao, tanto più, che la ſua depoſitione è vaga, nè diſtingue, ſi li baci, che ſi davano era in tempo di notte, ò di giorno, ma molto più ſi rende equiuoca, & improbabile la di lui depo- zitione, perche in detto corſo veloce, che faceua il Caleſſe, po- teua dartsi il caſo, che nello ſbarſimento di eſſo portafſe l'acci- dente, che ſi vniſſe caſualmente il viſo dell'vno con l'altro , che ad eſſo poteua parere in atto di baciari, come ben ſpeſſo ſuccede anco quando non ſi fa ſimile cammino , ſecondo la qualità delle ſtrade, e paſſi rotti, che ſi trouano, per il che ſi rende

rende assai insuffiscente , e dubbia la di lui deposizione per altro ardita , & incredibile .

Come pure ciò , che troppo animosamente si afferisce dall'anonimo , che giunti nell'Osteria di Castelnouo fosse stato ordinato all'Albergatore si douesse aggiustare vn sol letto per riposo dell'i fugitiui,e che assieme dormissero , perchè l'Oste non ha ardito di deporre nel suo esame , che li medesimi uin-tamente giaceffero in esso , anzi tanto dalla deposizione della Donna , quanto dall'altra del Caponzacchi si esclude la con-dizione , poichè ne' loro constituti constantemente affer-mano , che niuno di loro si mise in letto per riposare , e che solo la Donna sbattuta dall'incommodo , e patimento di sì precipitoso cammino , per poche hore restasse assisa sopra vna sedia rimanendo sempre il letto aggiustato nella forma , che l'Oste l'hauena accommodato , che guasto si farebbe trouato , quando in esso hauessero riposato , e si comproua anco , che sopragiunto il Franceschini in detto luogo , trouò , che il Ca-ponzacchi stava sollecitando fossero posti all'ordine li Ca-ualli per il proseguimento del viaggio , e non dandosi alcuna proua in contrario , non si può con giusta ragione dolersi il Franceschini dell'offesa del suo honore , che intatto dall'i fugitiui li fu conseruato .

Il titolo , al quale similmente s'appiglia lo stesso nomato Scrit-tore , che il Decreto della condanna del Caponsacchi alla-relegatione , sia concepito pro cognitione Carnali , per fo-men-to della causa d'onore , non ha punto di fermezza , per-
che fù corretto , come non vero , edisonante dalle proue , del-
che ne sono legittimi Testimonij l'istesso Monsig Gouernato-re , e tutti li Giudici , e Notarij del Tribunale , che interuennero nelle Congregationi Criminali , e se si fa mera reflessio-ne , il titolo della Causa è appunto , come la frasca appesa fuori della porta dell'Osteria , che ben può significare , che in quel luogo si vende il Vino , mà concludere ; che quello si vende , sia buono , spacciabile , e recipente , oh questo nò ; Perche si trouarà esserui del punto , matricoso , e d'altre qua-lità infette . Si rileggono perciò le Carte , e le proue regi-strate nel Processo , con le quali si giustifica il delitto , e non , con il titolo erroneo , che nè per ombra si rinuerrà esserui il supposto commercio Carnale , anzi nè meno sospetto d'impu-rità , e che nel Processo ne manchi ogni proua ben può com-pren-

prendersi dalla leggierezza della pena non corrispondente, alla grauità del delitto, e dall'improprietà di condannare il Caponsacchi come adultero, pendente anche la Causa contro la Donna, che non poteua esser condannata indifesa.

Mà per togliere ogni sospetto del preteso adulterio, si prega ogni disappassionato Lettore à riflettere, non essersi potuto commettere in Arezzo, perchè alla custodia del Marito vi fu aggiungeua quella de' Fratelli, quella della loro comune Madre, quella della Serua, quella de' Parenti, e quella de' Vicini, anzilà volontaria prigionia della meschina in vn' angusta stanza sempre rinchiusa, per custodire il suo candore; nè meno nel viaggio per essersi dimostrato del tutto inverisimile, improbabile, e non prouato, & essendo lunghi dali vero, come ne pure in Roma, essendo notorio, che da Castel nouo fu condotta nelle Carceri, e da queste trasportata nel Monastero delle Scalette, e poftia per la sua grauidanza, sotto si-gurrà d'hauer la Casa per Carcere di scudi 300. consegnata à detti Coniugi Comparini, trouandosi intanto il Caponsacchi alla sua rilegatione in Ciuita Vecchia, e nella quale cessava ogni sospetto, mentre vi era concorso il consenso dell'Abbate Franceschini tanto zelante dell' honore del Fratello, e proprio.

Nè si può senza gran violenza ritenerc, mentre si sente dallo Scrittore esagerare, cheil Caponsacchi vscito dalle Carceri con la rilegatione à Ciuita Vecchia, in tempo, che la Moglie si riteneua per Carcere in Casa di detti Coniugi, albergasse in Casa loro, non potendosi dire menzogna più sfacciata di questa, attesoche il Caponsacchi non fù mai hospite di quelli, e subito vscito dalle Carceri si portò al luogo della rilegatione, che religiosamente hà custodito, senza mai esser ritornato à Roma, nè la Donna vscì dal Monastero, se prima non era giustificato à Monsignor Gouernatore, che quello dimorava in Ciuita Vecchia, colà costituito con fede autentica del Cancelliero di quella Corte.

Mi permetta per tanto il detto Scrittore, ch'io lo rimproneri di troppo ardito nel tacciare l'onore del Franceschini macchiato dalla Moglie, con dire, che appena salite le scale della Casa del Comparini in compagnia delli suoi huomini armati per commettere l'esecrando eccidio, rimirasse quelle mura tutte piene de suoi scorni, come che le dette muti pateti

reti hauesse saputo Inuentarsi machine d'insognati pensieri per fomentare la di lui inhumanità ad vna così horrible strage, mentre di ciò non se ne porta altra testimonianza di quella esso ne scriue capricciosamente senz' alcun fondamento, volendolo disonorato per forza, perchè à gli altri disonorì se gli cumuli ancor questo, benche à torto, essendo ben posto in chiaro di sopra, che la causa del commesso delitto non fù quella dell'onore per riparare li torti fatti dalla Moglie, mà li suoi inganni scoperti, il lucro speranzato, suanito, e le liti pendenti.

Di che se n'apporta vn'altra non men convincente dimostrazione, se l'onore à ciò spinse il Franceschini? non era assai vendicato con la morte della moglie? perchè imbrattarsi prima anco con il sangue di Violante, e di Pietro non complici della pretesa dishonestà? perchè hauer tese l'infidie per più continuati giorni anco in procurare la morte di quel pio Benefattore, che mosso ancor esso à pietà, somministraua loro aiuto nelle dd. liti? in questo non vi è caduto mai il sospetto del pregiudicato onore, mentre che la moglie stava in Arezzo, & esso dimoraua in Roma, e prima si maritasse, non era in età, che di soli tredici anni non compiti, e dopo la fuga dal marito ritornata in Roma si sà come restasse custodita nelle Carceri, nel Monastero, e poi nella Casa di dd. Genitori, in tempo, che era vicina à sgrauarsi; Dunque si può concludere auueratamente, che il motiuo dell'occisione fusse altro, che dell'onore, mà come disse dell'interesse, e delle liti, come confessò nel suo esame l'istesso Franceschini.

Nè due sprezarsi la dichiaratione fatta dall'istessa Donna in articolo di morte, all' hora che alla presenza di molti Religiosi, e Persone d'intiera fede, constantemente soffrendo le tante ferite, mantenne, e professò con gran franchisezza d'esser sempre vissuta casta, e fedele al suo Marito, implorando con viscere di somma rassegnatione dalla Diuina misericordia il perdono d'ogn'altro errore, che di quello hauesse commesso à scorno del Marito, non presumendosi in quel punto la moribonda mentire in discapito della salute eterna dell'Anima sua; Douendosi ancora riflettere, che in d. fatto vi concorse vna specialissima gratia dell'istesso Omnipotente, Dio in far soprauiuere per pochi giorni la moglie, acciò potesse

teffe far palese la sua innocenza , e dar lume dell'Occisori , senza di che sarebbero andati impuniti li delitti , per ciò nel medemo atto il Franceschini reiteratamente comandò alli suoi Compagni , che offeruasco se era morta bene , e quelli prendendola per le treccie , & alzandola da terra oue giacea , credettero , che fusse morta , perche la pouera Donna per istinto naturale seppe ben simularlo col suo abbandonamento , come confessano li Delinquenti , e questo concorso di gratia tanto più auuera la dichiaratione della moglie , che resta verificata con la confessione delli medemi Rei dellli delitti . Mi sono riseruato per vltimo di discorrere , e rifiutare quello , che il d. Scrittore rappresenta dell'Abbate Paolo , e se hauessi à dire il vero , egli si può con ragione affermare esser stata tutta la pietra dello scandalo , egli hauer fomentato Guido suo fratello à gl'eccidij , egli hauer tramato tutta la machina , attelo , che esso fu quello , che da principio volle auorza con industria , e con inganni il matrimonio di d. Francesca Pompilia , esso fu quello , che sosteneua le litigii Civili , e Criminali , che sotto nome de Grandi spacciando animosamente la loro parola , pretendeva d'estorcere con belle insinuazioni , con raggiro , e con inganno quella giustitia , che non si doueua ; esso era quello , à cui maggiormente si rendeva sensibile esser stato scoperto per homo di machina , e l'esser stato deluso nel proprio inganno , onde hà ben ragione di dire lo Scrittore , che li volti degl'altri li seruiuano di specchio per rileggere le sue male procedure , mà non dell'honore tolto al fratello .

Si tralascia di rispondere à ciò , che l'Anonimo procura di far credere in lode dell'Abbate Paolo Franceschini , per eccitare maggiormente il compatimento , mentre l'intentione dell'Autore della presente risposta , altra non è , che di metter in chiaro la falsità de supposti contro l'onore della pouera Donna , e de Comparini , e di seruire alla giustitia , lasciandone il giudicio à chi n'hà piena cognitione , e per l'istesso riguardo si trascura la risposta à molt'altre improprietà , che dal detto Scrittore inutilmente si dicono senz'alcun proposito , concludendosi la presente risposta coll'esempio da esso allegato di Sansone , che all'ora , che si vidde esposto alle publiche burle del Popolo , diede vna scossa alle Colonne del Palazzo , facendolo cadere per morire con gl'altri , e sotto le ruine di quello

quello , per non esser più ludibrio de la gente ; Così d.Franceschini , per non esser più schernito da suoi inganni , conviene , che con li suoi Compagni paghi la meritata pena de proprij delitti , troppo perniciosi alla Republica,& alla quiete , e sicurezza , che deuono prouare li Litiganti nella Corte di Roma , per mantenere la quale ha prouisto la vigilanza de Sommi Pontefici Alessandro VII. e de Successori , con la Constitutione sopra di ciò publicata , e co' Bandi successivamente promulgati ; La santa dispostione delle quali Leggi douea tanto più rassegnatamente esseruarli , quanto che haueua il medemo eletra la strada giucitiale , e li ricorsi fatti al Sommo Pontefice Regnante , zelantissimo del giusto , erano stati rimessi à suoi Giudici , di che non senz'una sfacciata ingiuria poteua dolersi , come pare , che l'Anonimo Scrittore voglia ascriuerlo ad aggrauio , dal quale s'esacerbasse lo sdegno del Franceschini , il che parimente dimostra con qual animo prorompesse in eccessi così detestabili .



Romana Homicidiorum.

III.^{me} & Reu.^{me} Dñe. O Missa vltori decertatione cum Domino meo Fisci Aduocato super communicatione suarum Allegationum, quia tempus breve est, & magnam eidem obseruantiam profiteor vltque a minori etate; Transeat, quod vbi agitur de nece inficta per maritum vxori sua non in actu deprhensionis eiusdem in Adulterio, sed ex interuallo, sola suspicio quantumvis vehementis non sufficiat ad eximendum a poena ordinaria legis *Cornelia de Sicar.*, sed requiritur liquidissima probatio Adulterij, quemadmodum exaduersò prætenditur, cuius tamen contrarium nos probauimus in præterita §. Quamquam ad hoc, & tradunt ibidem non allegati *Dond. consult. 97. num. 16. in fine, Sanfelic. decis. 337. num. 12.*, *Muta decis. 61. num. 2.* vbi quod sufficit, quod reperiantur in mansione soli, & num. 3., præfertim si mulier erat pulchra, *Mascard. de probat. conclus. 61. num. 1.*, & duob. seqq., vbi refert illud *Ouidianum*

Lis est cum forma magna pudicitie,

Et vir illam desiderabat, prout in præsenti iuxta aliud eiusdem

Authoris

A Iuuene, & Cupido credatur redditu Virgo?

In præsenti tumus in casu nedum liquidissimæ probationis, sed facti notorij, quia habemus Decretum huius Tribunalis, per quod huiusmodi Adulterium fuit canonizatum, cuius verba quamvis relata in præsenti Informatione §. Absque eo, quod placet hic repetere, quia sunt nimis clara, ibi -- *Ioseph Maria Caponsacchi de Aretio pro complicitate in fuga, & deuiatione Franciscæ Compartimæ, & cognitione carnali eiusdem relegatus per triennum in Givitate Vetus.*

Non autem præterire possum, quod adhuc prætendatur, quod huiusmodi Decretum fuerit revocatum; quia, ut dixi in Informatione, veritas est in contrarium; solum enim habemus, quod in mandato de excarcerando Canonicum delinquenti, omisssâ relatione totius supra relati Decreti, fuit dictum -- *pro causa, de qua in actis, quæ verba tantum abest, quod præseferant dictam revocationem, quinimò probent eiusdem Decreti confirmationem, ut firmavimus in Informatione §. Nec verum est, quod idem dicendum venit de similibus verbis adhibitis per Notarium in obligatione quam fecit Francisca Pompilia de habendo domum patris pro carcere, cum à Monasterio, vbi securè permanebat, fuit ad illam traducta ex causa suppositæ infirmitatis, sed verius dicam, prægnantia, quam malo fato voluit abscondere.*

Tanto magis, quod ista prætensa Decreti revocatio non potuisse fieri altera parte non audita, quemadmodum dixi in Informatione §. Eoque magis.

A

Sicuti

Sicut præterire non possum , quod dicatur Canonicum fuisse
condemnatum solùm in penam relegationis ob defectum pro-
bationis Adulterij ; Si enim huiusmodi probatio non extisset,
quo iure potuissent Domini mei Iudices exprimere in Decre-
to, quod illum condemnabant pro cognitione carnali eiusdem
Franciscæ Pompiliæ ? Veritas itaque est , quod Iudices habue-
runt pro concludentissime iustificato dictum Adulterium , &
dictum Canonicum de eodem coniunctum, cùm in Procesu nil
aliud decesset, quam deprehensio in illo actu obsecro, quam
non esse necessariam ad probandum Adulterium, in his termi-
nis scripsit Afflitt. in Constitutione si maritus num. 4. vers. 6 ponde-
ras. & sequuntur Farinac. quæst. 121. num. 420 , Polit. de Reg. Aud.
tom. 2. tit. 10. cap. 7. num. 29. vers. ac proinde pag. 34.

Quod verò poena, in qua fuit condemnatus dictus Canonicus non
respondeat dicto delicto , circa hoc plura possent replicari, sed
quia id non respicit D. Guidonem, ideò etiam hoc parité tran-
seat ; Vtcumque enim sit quisnam negare potest , quin idem
D. Guido perleto dicto Decreto , quod glossa noui indigebat,
iure debuerit irasci de violata sibi coniugali fide , & quod si po-
steà de huiusmodi violatione vindictam sumpsit aliqualiter
non sit excusandus , Textus est in l. si Adulterium 38. 6. Imperato-
res ff. ad l. Jul. de Adulter., & in l. si quis in graui 5. si quis moriens
in fine ff. ad S. C. Syllan., & tradunt Doctores per nos plena ma-
nu congesti in præterita §. Et conciliando .

Et quidem quamvis huiusmodi vindictam sumplerit ex interual-
lo, vt plenissimè fuit demonstratum in dicta præterita Informa-
tione §. Nec verum est, ita ut pauci Doctores sint, qui contrarium
tencant, & propterea hereticum ferè sit de veritate huiusc senti-
tentia dubitare, vt inquit Socin. sen. conf. 74. num. 8. lib. 1. præter-
tim cùm illa sit recepta in omnibus ferè Tribunalibus Mundi,
signantur in illo Sacra Consulta, quæ normam præbet ceteris
Tribunalibus Urbis, & totius Status Ecclesiastici , ita ut ab eius
opinione recedere ad instar quoque sacrilegij esse affirmet,
Concol. alleg. 95. num. 33. , & allegat. 97. num. 8.

Est autem pulchra prætensiō velle Adulterij liquidissimas proba-
tiones excludere ex dicto ipsius Mulieris de illo coniunctæ , &
illius occasione, vt ingenuè fatetur Dominus meus Procurator
Generalis Fisci , in Monasterio retentæ , cum scilicet non te-
neretur neque in Articulo mortis detegere propriam turpitu-
dinem, vt probauimus in dicta præsenti Informatione §. Et qua-
tenus, & §. sq. ; Et cum ipsa male , ne dicam pessime vixerit in
perniciem honoris, & existimationis sui Viri nullam ei iniuriam
irrogamus , si præsumere volumus, quod nec in morte voluerit
resi fisci, iuxta illud -- Chi mal viue , mal muore -- & quia nemo
nec in morte presumitur Sanctus Ioannes Baptista, vt in Infor-
matione §. Nec valet dici .

Firmo itaque remanente, quod D. Guido iustum habuerit Cau-
sam occidendi, siue occidere faciendi Franciscam Pompiliam
Vxo-

Vxorem ; Idem necessariò dicendum venit quoad homicidia Petri , & Violantis Soceri , & Socrus , quia in Processu fabricato occasione fugæ dictæ Franciscæ Pompilie à viro emerse etiam probatio , quod ipsi conspirarunt in illud idem delictum , consequenter fuerunt in causa læsionis honoris , & existimatio nis eiusdem D. Guidonis , quæ etiam honoris læsio ex eo resul tabat , quod ipsi supposuerunt , & palam omnibus fecerunt , quod eius vxor non erat eorū filia , nec legitimè genita , sed filia meretricis , & posteā illam receperunt in suam Domum , postquam fuit declarata Adultera , aut enim ipsa erat ipsorum filia , & non debuissent hoc Iudicialiter negare , aut verò non erat filia , & nec debuissent illam recipere in suam Domum , postquam fuit de Adulterio conuicta , cum taliter agendo facto ipso declarauerint se eiusdem Lenones fuisse , & esse velle , l. 2. §. Lenocinij l. Marii lenocinium ff. ad l. Iul. de adul. l. 2. C. edem , Menoch. de arbitr. cas. 534. num. 23. Farinacc. quest. 144. num. 94. & 98.

Confessio D. Guidonis cuim illa Qualitate , quod homicidia demandauerit ex Causa honoris non potest scindi , sed acceptari debet per Fiscum cum dicta Qualitate , vt probauimus in Informatione S. Huiusmodi enim Confessio Doctores verò in contrarium allegati per Dominum meum Aduocatum Fisci procedunt in Qualitate extrinseca ab ipsa Confessione , & quæ aliunde non iustificatur , & demum vbi agitur ad pognam extraordinariam , quemadmodum & nos admisiimus in nostra Informatione §. Præterim .

Sicuti autem Causa honoris relevat Dominum Guidonem à poena ordinaria homicidii , ita eum relevare debet ab alijs quibuscumque poenis ordinatiis appositis in Bannimentis , & Constitutio nibus Apostolicis contra deferentes arma prohibita , seu committentes alia delicta ; dixi enim , & repeto , quod iustus Dol or , qui cum excusat ab uno Delicto , excusare quoque debet ab alijs , cum semper , & vbique militet ratio , quod ipse non fuerit in plenitudine Intellexus iuxta latè firmata in Informatione à §. Agnoscit Fiscus , usque ad § Quo verò ad Litem .

Et sicuti ista Causa est sufficiens ad consequendam minorationem poenæ respectu D. Guidonis , ita pariformiter sufficiens reputari deber ad illam consequendam fauore eius Sociorum , qui tamquām Auxiliatores puniri nequeunt maiori poena , quam ipse Principalis iuxta innumeros ferè Doctores , & quidem magni nominis allegatos tūm in præterita §. Qua dicta sunt , cum seq. tūm in præsenti §. Verū , & Socios , quibus exaduerso nullum fuit datum responsum .

Facilius verò respectu Blasij Agostinelli , qui neutiquām fassus fuit aliquem occidisse , seu vulnerasse , sed solum modo adstisse , vt præuentiuè perpendimus in Informatione §. Quoad Blasium .

Et quod Dominicum , & Franciscum ultrà deducta fauore aliorum , ipsi sunt forenses , qui propter eā non ligantur Bannimentis Gubernii (quibus non ligantur alii , qui non sunt de Distri

Quo) nec Constitutionibus' Apostolicis Armorum delationem
prohibentibus , vt diximus in præterita §. Quæco facilius .

Multò magis cùm Dominicus adhuc asserat se esse ætate minorem,
prout pro tali fuerat descriptus in Processu fol. 304. & respectu
Francisci vltra prædicam descriptionem , de qua in eodem
Proc. fol. 35, habeamus fidem Baptismatis , quæ concludenter
probat ætatem , Buratt. decif. 75. num. 1., & decif. 117. num. 20.
par. 12. recent. natus enim fuit die 14. Februario 1674. quo fit ,
vt tempore commissi delicti) quod attenditur ad effectum pu-
nitioñis iuxta Gloss. in l. sciant v. moritur ff de legit. hered. , Marsil.
in l. Infans. num. 13. ff. at l. Corn. ad Stear. & in l. de minore. n. 40.
ff. de quæst. , Clar. in præf. §. fin. quæst. 60. num. 4., Tiraq. de Pæn.
temper. caus. 7. num. 8., Menoch. de Arbitr. cas. 329. num. 22., Cam-
pan. refol. 2. num. 22.) nondum expulerit annum vigesimum
quartum suæ ætatis ; Minori enim vigintiquinque annis est
poena minoranda , l. ferè in omnibus ff. de Regul. Iur. l. aut facta
§. Persona ff de Pæn. l. Auxilium §. In delictis , & l. si ex Causa §. Nunc
in minoribus ff. de minorib. cap. hoc sit positum 26. quæst. 7., Bartol. in
l. quid ergo §. Pæna gravior. ff. de his , qui not. Infam. Marsil. consil. 48.
num. 54., Vulpell. consil. 63. num. 10., Præt. respons. Crimini 25.
num. 46., Farin. quæst. 52. num. 41., & seqq. Odd. de Reſit. in integr.
par. 2. quæst. 80. num. 72., & pluribus seqq. , Baron. de effict. minor.
etat. effict. 10. num. 1., & seqq. , Narbon. de etat. annor. 25. quæst. 43.
prefertim num. 6., D. Raynald. obſeru. par. 2. cap. 14. in Rubr. n. 270,
& 274. cum seqq. , Theſaur. dec. 161. num. 4., ubi inuebit in Indices
contrarium prædicantes , & nn. seqq.

Et quidem de necessitate, non autem Iudicis arbitrio, quia huius-
modi pœnæ minoratio procedit ex Beneficio à Iure introducto ,
& ex Causa intrinseca delictum minuente , Ancharen. quæst. 18.
num. 3., & 4. lib. 2., Odd. testans de communī dicta par. 2. quæst. 80.
num. 93., Farin. dicta quæst. 92. n. 161., & 165., Baron. d. effict. 10.
num. 14., vbi quod Iudex aliter faciens tenetur in Syndicatu ,
& numeris seqq. , Sabell. alleg. 6. num. 103. post Tom. 2. Summa, Præt.
respons. crimi. 25. num. 46., D. Raynald. dicto cap. 14. in Rubr. n. 288.
Theſaur. dicta dec. 161. num. 6.

Licet verò non desint , qui contrarium sentiant, quod scilicet to-
tum pendeat ab Arbitrio Iudicis, nostra tamen sententia est ve-
rior , & receptioni saltem in Criminibus, quæ non sunt de atro-
cissimis, vt distinguendo tradunt Spad. consil. 110. num. 15. lib. 1.,
Farinacc. dicta quæst. 92. num. 107., Campan. ref. 2. num. 26., & 55.
ibique Oril. num. 3. 6. & 7., & quod vbi delictum est solum atrox,
vci atrocios Iudex teneatur necessitate officii poenam minorare
vltrà mox allegatos Theſaur. dicta dec. 161. num. 5.

Et quod hæc sententia locum habeat in crimine homicidij ,
non obſtante diſpositione Textus in l. si quis te Reum Cod. ad l. Cor-
nel. de Stear. ibi- Si quis te Reum legis Cornel. fecerit Innocentia pur-
gari crimen non adulta etate defendi conuenit - quia diſpositio huius
Textus taliter interpretari debet , vt nempe minor Delinquens
non

non excusat in totum, sed tantum iniurias puniatur iuxta antiquiores plena manu congestos per Farinac. dicta quæst. 92.n.112. & seqq. quod idem sentiunt Guazzin. def. 33. cap. 17. num. 1. Caball. res. crimin. 134.num.11. Prat d. respons. crimin. 15. sub num. 48. Paschal. de patr. potest. par. 2. cap. 8. num. 22. Ther. compend. decis. par. 3. seft. 2. Thesaur. d. decis. 161. presertim num. 7. Corthiad. dec. 92. num. 29. & decis. 96. num. 57.

Maxime quando, prout in praesenti, minor non deliquerit solus, sed in societate aliorum, tunc enim presumitur seductus, ideoque facilius poena ordinaria eidem venit minoranda Farinac. d. qu. 92. num. 108. circa fin. vers. & etiam quia, Hector. Felic. alleg. 36. nu. 6. par. 1. Guazzin d. def. 33. cap. 17. num. 1. vers. & late ego deduxi. Thor. vot. 10. num. 16. par. 2. Oril. ad Campan. res. 2. num. 8. D. Raynald. dict. par. 2. cap. 14. in Rubr. num. 28 2vers. secus quando, & vers. & quod ad minorandam Chartar. decis. crimin. 78. num. 6.

Nescimus quo se vertere pretendat Fiscis pro destruendis hisce iuridicis fundamentis, quia Domini mei agentes ipsius Partes nec in praeterita, nec in praesenti quidquam motiuaront circa predicta, quotiescumque vero pretendant hanc nostram exceptionem elidere cum Statuto Florentie lib. 1. rubr. 33. qualiter minor 16. annis delinquens puniatur in criminalibus, plures suppetunt responsiones, &

Primo, quod dispositio huius statuti non extenditur ad delicta commissa extra Territorium dictæ Civitatis, sed locus delicti, eiusque statuta attendi debent, istis vero cessantibus, prout in praesenti cessant, quia bannimenta huius Gubernij, vbi agitur de punitione quoad forenses locum non habent ex defectu potestaris Principis, seu Officialis illa condentis ex allegatis in praeterita §. Quæ eo facilius, & §. seq. tunc delinquens puniri debet secundum lus commune Bartol. in l. cunctos Populos num. 49. & 50. ibique etiam Bald. num. 45. & seq. Cod. de Summa Trinit. & Fid. Cathol., Farin. pragm. crimin. par. 1. lit. D. num. 107.

Secunda Responsio est, quod statutum nil aliud dicit, quam quod minor annis decem, & sex non possit puniri poena ordinaria delicti, consequenter operari debet in hoc casu, quando vero agitur de minore excedente dictam etatem, sed minore annis viginti quinque, Regula desumitur debet à luce communii, à quo dictum statutum in tali calu passiuam recipit interpretationem, ut in puncto huius met statuti consuluit Marcus Afin. interstat. crimin. diuersi. in fol. tom. 2. conf. 110. num. 12. sequitur Caball. dicta resol. crimin. dicto cas. 134. num. 11. ad medium, vbi testatur se vidisse ita practicari penam minori annis 25. maioritatem decem, & octo minorum, & in puncto aliorum simillimum statutorum resoluunt Anchara. qu. 58. num. 5. & seq. Boff. tit. de confess. n. 69. vers. Consideratio tamen.

Tertia denique responsio, & qua ponit falcem, ad radicem est, quod iste Inquisitus non est de Ciuitate Florentie, nec de eius Territorio, sed de Territorio Aretino, Ciuitas autem Aretii, ejusque

eiisque Comitatus non ligantur Statutis Florentinorum , tūm-
quia non sunt Subditi , sed recomendanti dicitæ Ciuitati Floren-
tia , ut in pūcto consuluit Socin . Sen . conf . 7 . presertim num . 2 .
¶ 4 . seqq . vol . 1 . & conf . 74 . quod est Bartholomæi filii sub num . 8 . eod .
vol . 1 . vbi dicit . quod præcedentem consilio sui Patris se subscriptis
severus legum Interpres Thomas Docius Seneonis ; Tūm quia
eadem Ciuitas Aretii habet propria statuta Socin . Sen . d . conf . 7 .
num . 7 . vol . 1 .

Recurrenit enim ad statutum Ciuitatis dominantis , cum aliæ Ci-
uitates subiectæ non habent propria , secùs siilla habeant per
Text . in l . de quibus 31 . ubi Bald . num . 6 . & Castræ . num . 2 . in fine vers .
patet etiam ff de legib . Socin . d . conf . 7 . eod . num . 7 . vol . 1 . idem Castr .
conf . 129 . num . 1 . lib . 1 . Gabr . conf . 29 . num . 47 . lib . 2 Mendos . in
addit . ad Roman . conf . 21 & circa finem , Rot coram Coccin . dec . 1451 .
num . 6 . & coram Dunog . Iun . decif . 937 . num . 18 . & in rec . dec . 107 .
num . 17 . & seqq . par . 15 .

Itaque tunc contraria , velsimul incompatibilia Gratian . discept . 9 .
num . 25 . Rot . coram Dunog . Iun . dicta dec . 937 . num . 19 . & seq & dicta
dec . 107 . num . 19 . & tribus seqq . par . 15 . rec .

Cuiusmodi esse illa Ciuitatis Aretii respectu aliorum Ciuitatis
Florentiæ testatur Socin . Sen . d . conf . 7 . d . num . 7 . vol . 1 . & patet ex
Rubr . de oblig . minor . vbi mandatur , quod minores 25 . annis non
possint obligari sine certis solemnitatibus , super qua consuluit
Paul . de Castr . conf . 124 . lib . 4 . ex hoc enim statuto satis conitat ,
quod in dicta Ciuitate , & eius Comitatu minor ætas regulatur à
lure communi .

Quatenus vero Fiscus habeat alia fundamenta , quæ ex nostro
debili Iudicio diuinari non potimus , supplico illa benignè
communicari , ne Pauper Inquisitus minor remaneat Inde-
fensus .

Denique respectu Domini Guidonis supplico animaduerti ad in-
felicem statum ipsius , & nobilis eius familiæ ; habuerunt enim
omnes de hac familia , eiusque cognatione , quod satis , & vsque
ad ultimum vitæ spiritum lugere possint , cùm relixerint ad
ignominiam eisdem illatam ab hac muliere , eiusque Genito-
ribus , propter quam , & dubium in præsenti est , quod aliquis
etiam Proximior infanuerit , hoc sane dictat eximia Pietas Cle-
mentissimi Principis , & Illustris D . mei , quibus ipsismet Inquisi-
tus toto corde se commendauit in suis constitutis , absque eo ,
quod hoc idem discant ab Auctore Anonym . Subtus Sansalio . dec . 337 .
in fine .

Quare &c .

Desiderius Spretus Pauperum Aduoc.

Deliberation of the
Committee of the
Central Committee of the
Communist Party of China

Illustriſ. & Reuerendiss. D.
Vrbis
GVBERNATORE
In Criminalibus.
Romana Homicidiorum.
P R O
Domino Guidone Francischino, & So-
cijſ Carceratis .
C O N T R A
Fiscum .
—
*Replicatio Iuris D. Aduocati
Pauperum .*
—
ROMÆ , Typis R. Cam. Apost. 1698

M: Sig. b. Sig. b. Louis Colino.

Dardi giugno lo Distinguizioni iniziaroni da M. J. G. ^{ma} al pro' della 6. m del Sig.
Luidi franceschini, poiche' havendo determinato la Congregazi^{re} di Monteb. Luidi
che devo Sig. Luidi fissa Reo di morte now offerto le Regioni detto ad al suo
favoro, al gran fasto d'alleu multe etiam qualibet dilatation per qu' ref. cant
il suo clericato dai me allegato, al q' effuso fu spedita rogation in credito; ma
giudicando esponente la ch. di N. S. il uovo differire la executione della sen-
tencia già deferita habbe per bend con chirografo particolare designato al gran
Privilegio Clericale, che fu fissa posse rogation, et alias minoritati apposta al
franc. di Zappuccio uno de' Complici; si che oggi è stato eseguito lo sen-
tencia contro tutti e quelli, che sotto distinctione nel genero illius processi, hauen-
do il Sig. Luidi terminare la sua vita colla decollatione; venuta a lungo
latrone ai suoi parenti, et amici si esser stato commiserato da reo gl' amici
ni d'onore, o da i buoni, ancorché, confessando la sua abolebita non posso
negare di riconoscere un perfetto Remuneratio, attribuendo il tutto al vero haverlo
saputo cognoscere le sue male Regioni. Comprobato il q' d' die q' p' lo q'
m' haudens allez de lui Cagio, et al resto i suoi amici con cognoscetissima
evidenza della continuaz. del suo comandri, mi raffermo, e congo
M. D. M. M.

Roma 22. feb. 1688.

Quidam scilicet ob rem
Ecclesiast. A. singula



Le giustificazioni medesime non sono giuste in tempo perché
 leggi finalmente! dopo tanti' compassi e' stata accettata
 la giurisprudenza del governo di Giulio con farli la cosa, e i
 quattro sacerdoti non stai' imputati. La causa fu' rivelata
 da Marsigli, ma perche' s'era detto in chiesa, e
 se questo ti' presentava che quando a lui non uccorsova
 la vita dopo che s'era creduta battuta in troppo tempo
 d'averne le giustificazioni il Papa penso' ieri il Chi
 rografa, e ha' scritto che leggi sannuniate n'ogni cosa
 già che e' stata autorita' di Dio, che agli agenti simili penso'
 almeno con le mitone facce se n'è ricavato che non
 da galano' homine, perche' oltre l'averne mosse con corage
 gio, e exemplarità e' stato compiessone da ogni
 lano' homine, e non ha' perduta niente la cosa sua
 in masseria della reputazione. Vi' e' un uomo tutto
 Roma come pur si vede, e non ci' e' stata rigore, con
 furore che ti' sia mossa forza, e con li' tenuo maneggiare
 riconvocazion' di gran conseguenza, perche' l'inglese
 Ambasciatore dell'Inghilterra ne parla di propria voce
 Marsigli, conforme agli mi' dire certaldo, e pote' cose

sono precipitato in un abito.

Ho terminato la mia missiva al Long^r del Comitato, e sono
ubbi che domani il Segretario degli Interni farà quanto che
riesce all'ordine. So che peggio è favorire le quattro cause
del paese più presto che sia possibile, e quindi il Can-
tillo non ne temi l'adito faccendo acciuffarmelo
perché io sono pronto a obbligarmi a stento cosa
ubbi unica di queste imbrogliate possibili sia
affine retta con rinculo
di Cesare De Mattei

Roma 22 Febbraio 1892

N.D. col. S.
Graziano del Corvo

M. M. M. abbr. d'acq. d'acq. mis. d'acq. 124

Martedì si proposse la Disgraziatiis. ca' e la foggia. Bal. domenico
no risolue = Dilato et ad mentem = La mente era che l'
aspettavano le disgrazie. Dall'uccidere consanguineo. Si
questo facessero se solare pugilature fatto il difensore
e pugilazione a' regolari i buoni Romani quando nel
M. Galvadona alle due di notte morto proprio sotto occhio
che il Chierico fu deragliato dall'uccidere quale si di aducere
et alla minaccia di via delle forze. Sottoscritto il Chierico
si prononzi. Salito tal nuovo, e con esso la corte della
della Giustitia che c'egli sia Epp' dopo il prezzo di
cinq[ue]c. cioè dal giorno M. Guido con il bighetto della Testa
e degli altri quattro forci con la forza. Non significa a
M. Guido il mio dolore perche d'ogni notta esser la med.
vaidicò testimonio.

Le disgrazie. sarebbero state di circa trenta grandissime
ma non nel caso perché M. Guido ha voluto così

facile deposito del fisco, mancandogli che una pugilatura
che due ore fa fatto che mi sarà cogliuta accio' ch'ella
fatto a s'istina positiva.

Torna che il M. Guido del Corso e' strigato dagli interessi
potestibili scrivere al C. d'acq. nella C. d'acq. matrimonio.

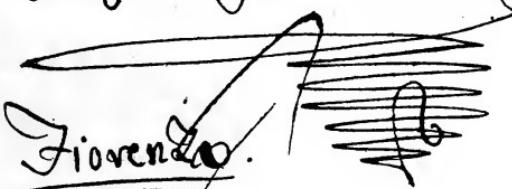
si nell'altra del sonet onde mi permetta' tutto
che V. libra. L'aspirarà, pregandola sempre più,
e incisamente comandi allo spirito di possa essere
di filosofia. Romantico profeta logico.

1658. S. G.
Carlo Ratti Volturno

Al M° M° M° M° M° M° M° M° M°
Sig. Dottor Francesco Cencini



Al M° M° M° M° M° M° M° M° M°
Sig. Sig. Sign. Sign. Sign. Sign. Sign.
Sig. Sign. Sign. Sign. Sign. Sign. Sign.
Florence.



Romana.

Illustriſſ. & Reu^me. Dñe. **I**N contētio-

ne acerri-
mē, & eruditissimē habita inter DD. Pauperum Defenso-
res, & Fiscum in Causa Homicidiorum per conductos ho-
mines patratorum à D. Guidone Francischino in perso-
nam Franciscā Pompiliæ eius Vxoris, & Petri, ac Vio-
lantis Coniugum de Comparinis, renui in arenam descen-
dere, ne à proprio, quod cum eisdem DD. Defensoribus
ago, munere declinare viderer; Deditque moras, ac tem-
pus indulſit tacita etiam miseratio, nimis enim præjudi-
care credebam eisdem Guidoni, & Socijs pro tali Reatu
carceratis, ad quorum excusationem præcipue se exhibe-
bat causa honoris, si tunc voluſsem prosequi Defensam
longè antea mihi commiſſam pudicitia, & honestatis eius-
dem Franciscæ Pompiliæ, cuius teneram Coniugij men-
tem nulla vñquam impuræ libidinis aspersit infamia, & cui
ſuspicax Maritus nihil potuſſet obijcere, niſi Vxorcidiū
fuſſet sequutum, quaſi ex hoc ſolūm Adulterium volue-
rit probare, quod Vxorem potuerit occidere, & occide-
rit, vt crederetur Adulteria.

Modd autem, quo, reſpectu Carceratorum omnium, Causa
remanſit funeſtissimē terminata (ſic enim deſinunt, quæ
incipere non debuſſent) reaffumendo infeliciſſimæ que-
ſtionis pugnam tutiſſimē aſſero, quod ex latè deductis in
mea Informatione ſuper excludione aſſerti Raptus ex gra-
tia reaffumenda; Et ex latiū cumulatis per Illuſtriſſimum
D. meum Fisci Aduocatum in ſuis doctiſſimiſ allegationi-
bus in vtraque Causæ propositioне diſtributis, abſoluendam
omniō eſſe memoriam prædictæ Franciſcæ Pomi-
liæ à ſibi iniuſtè, & nimis animoſe per Virum impietō
Adulterij criminē, & per definitiuam Sententiam decla-
randum ipsam Maritale fœdus non violaſſe; Absque eo,
quod incongrua videatur talis Instantia, nam quamuis per
mortem omnia delicta cefſent, vt per *Text.in l. Defuncto*,
*vbi Glosſ. & D. D. ff. de public. delict. & in l. Senatus consul-
tus, S. Si propter; ff. ad Tertullian. & in cap. Quorundam,*
diſtinct. 22. tradunt Eugen. conf. 21. num. 2., D. Canonicus

A

Rai-

**Rainald.in syntax.rer.criminal.tom.1.cap.2.§.1.numer.75.
vers. Et quando rcus, & tom.2.cap.23.§.1.2. & 3.num.234.
Carpzou.in prax.criminal.tom.3.quæſt.141.num.1. Nihil
ominus quando delictum est atrox , & eius naturæ, vt in-
deleibilem infamia notam secum trahat,eius memoria sem-
per durat, ac propterea interest D. Principali ipsius Au-
tricis famam ab asserto Adulterij crimine vindicare , vt
optimè tradunt Eugen.conf.21.num.5.circa med. Peregrin,
de iur.Fisc.lib.4.tit.5 num.35. ibi : Decimus tertius casus
est, cùm Hæredes defuncti ad purgandum infamiam , quæ
publicè contra defunctum laborat de aliquo criminе , vo-
lunt, ad tuendam illius innocentiam , quod de criminе ipso
cognoscatur, nam id fieri iure conceditur ; Boss. tract. cri-
minal tit.de pœnis, num.34.prope fin. ibi : Et nota omnino,
quod et simors tollat pœnam, tamen potest Hæres defuncti
profuma, & honore eius inflare, ut declaretur super eo cri-
minē ; Caball.resolut.criminal.cas.298. num.30.ibi : Quod
licet mortuo delinquente sit extintum crimen quoad per-
sonam ipsius, tamen Hæredes Rei pro eorum interesse , &
purganda infamia defuncti, possunt petere , quod proceda-
tur ad Sententiam , & declaretur defunctum non commi-
ssore delictum ; idemque firmat in num.5.egg.*

*Et quidem non sine manifesta ratione, nam sicuti Fisco per-
mittitur procedi ad vñteriora in cognitione delicti in vita
defuncti perpetrati , vsque ad illius memoriam damnan-
dam, vt ex Text.in l.6.C.ad l.Iuliam Maiest. & in l.final.
ff.cod.& in §.3.institut.de public. iudic. aduertunt Eugen.
citat.conf.21.per tot.D.Canonicus Raynald.dict.cap.2. §.1.
vers. Et quod dictus Reus, & vers. Et hoc in casu ; Ita pa-
riter denegari non potest D. Principali, tamquam Hære-
di beneficiato , & Successori eiusdem Pompilia , & Petri
Comparini, quin, dum de illius innocentia constat, instet
pro Sententia absolvitoria reportanda , cùm aliàs quilibet
admitti possit ad defunctum defendendum, vt monet Glos.
in cap.Damnationis 24.quæſt.2.& l.Scruum quoque, ff.de
procur.Penia ad Emericum in direct. Sac.Inquisit.part. 3.
comment.92.vers.Hæc accusatio, & vers.Ne quis autem,
Decian.tractat.crimin.tom.1.lib.5.cap.57.num.10. D.Ca-
nonicus Raynald.citat.cap.2.§.1.num.75, vers.Et hoc in ca-
su, circa med.*

Nec ad hulusmodi Sententiam retardandam iterum allegari
meretur fuga per dictam Pompiliam capta in societate
D. Canonici Caponsacchi, cum quo in Hospitio Castris
Noui Carceribus mancipata fuit; ultra quod enim pro ea
remouenda sufficeret allegare ludicatum huius Illustriss.
Congregationis emanatum sub die 18. mentis Februarij
proxime præteriti aduersus Guidonem Franceschinum,
per quod fuit publicè morti traditus sub die 22. subse-
quenti, non obstante, quod ad pœnam Vxoridij euad-
dendam vnicè insisteret super asserto Adulterio, quod ex
prædicta fuga ab eius domo resultare prætendebatur,
cessat quæcumque in honestatis suspicio ex defensionibus
tunc factis, & ex ipso Processu de justissima causa appa-
ret, propter quam miserrima Vxor huiusmodi fugam à
domo Viri arripere conata fuit, non quidem ex causâ ex-
plendæ libidinis cum asserto Amatio, sed ut ad proprios
lares remearet, ibique, & apud Parentes tutam, & hone-
stam vitam viueret; Quam sanè causam optimè præse-
runt, nerluni notissima iurgia statim ex orta post accessionem
ad Ciuitatem Aretinam vnà cum Petro, & Violante de
Comparinis in exequitionem conuentionis in capitulis
Matrimonialibus inferta. propter angustiam rei familia-
ris, itaut coacti fuerint post paucos menses Vrbem repe-
tere, non sine maximo mœrore ob deceptionem detectam,
ut constat ex epistolis Abbatis Pauli Franceschini, queri-
monias ex dicta deceptione resultantes præsupponenti-
bus, & signanter ex illa scripta 6. Martij 1694. ibi: Torno a
scriuere à V. S. che non voglio imitarlo nel modo di scriue-
re, non essendo da par suo seminar certe parole nelle lettere,
che meriterebbero risposte di fatti, e non di parole, e
queste sono offensive à segno, che le conseruo per suo rim-
provero, e sua mortificatione, & infra, ibi: Che se lei ci darà de' guai (che non credo mai) non ne resterebbo esente, né
pur lei; & ex alijs epistolis recensisitis in præterita Infor-
matione, & signanter §. Videns igitur, cum sequen., quæ li-
cet qualitatem alterationis non ostendat, attamen dum
D. Abbas Paulus non exhibuit litteras eidem scriptas, ma-
xime contra eumdem vrget præsumptio, querimonias fuis-
se iustas, & causam, ob quam conquerebatur, & alterca-
bantur, suisse veram, vt in proximis terminis firmauit Rot.

*in Romana, seu Neapolitana Liberationis à Molestijis
27. Februarij 1690. §. Ed magis, coram Eminentiss. Ar-
chiepiscopo Mediolanen. & in Romana Pecuniaria super
Exhibitione 21. Junij 1694. §. Clarius, coram R. P. D.
Muto.*

Verum etiam acerrima lis mota per Petrum Comparinum
super nullitate constitutionis Dotis, & probationis suppo-
sitionis partus factae per Violantem Matrem, tam ad deci-
piendum Virum, quam ad arcendos Creditores, qui de eo
tempore valde vrgebant, & cum Dos comprehendenderet
omnia bona, & integrum Comparini Patrimonium non
exigui valoris, inspecta qualitate personarum, mota per
Socrum controuersia super considerabili quantitate,
que, ut passim experientia docet, implacabilia odia, & gra-
uissimas iniurias parere solet, ut tradunt Grammat.
conf. 46. num. 4. Crauett. conf. 75. num. 11. Soccin. Iunior
conf. 73. num. 14. vol. 2. Decian. tractat. crimin. lib. 3. cap. 25.
num. 56. Vermigliol. conf. 321. num. 5. Farinace. quæst. 49.
num. 2. Huiusmodi effectum in infelicem Vxorem peperit,
ita ut Coniugalis amor iamdiu praecedentibus altercatio-
nibus turbatus, penitus extinctus remanserit, ita, & tali-
ter, ut ipsa pluries in propriæ vitæ discrimine propter Vi-
ri seueritatem, aliquando contumelij, & aliquando igneo
breuiori sclopulo eam persequenter, se constitutam vide-
rit, que sanè pericula sicuti dubitari nequit, quin sint aptis.
sima ad incutiendum metum in quemlibet constantem
Virum, ut monent Alex. conf. 156. numer. 4. libr. 5. Cepoli.
conf. 2. num. 5. Paris. conf. 60. num. 3. lib. 4. Mascard. de pro-
bat. lib. 2. conclus. 105. num. 49. Menoch. de præsumpt. lib. 3.
præsumpt. 4. num. 8. Boer. decif. 100. num. 13. Rot. post sec-
und. vol. conf. Farinaci. decif. 260. num. 10. & 11. ita multò
magis id affirmandum venit in Francisca Pompilia puella
teneræ ætatis, omni prorsus auxilio destituta, extra pro-
prios lares, & absentibus Parentibus, ut tradunt Menoch.
conf. 1. num. 290. lib. 1. Crauett. conf. 114. num. 3. lib. 1. Cepol.
conf. 221. num. 4. & 8. Mogolon. de met. cap. 2. §. 6. vbi quod
solus visus armorum, licet habens eis non vtatur, neque
ea euaginet, est iusta causa metus productiva, & §. 7. nu-
mer. 15. vbi Consanguineorum absentiam pro metu indu-
cendo considerat, D. Canonicus Raynald. tom. 3. cap. 25. §. 4.
num.

*et ratiōne mulier
euagie gravida
paucis annis fuga?*

num. 34., vbi quod sufficit videre signa , & actus manifesta voluntatis, vel præparamenta .

Ac propterè concurrentibus tot relevantissimis circumstan-
tijs, per quas Pompilia mota fuit maritale lectum deserere
fugam arripiendo, prorsùs exclusa remanet quæcumque
suspicio inhonestatis, & coniugalis violatae fidei ; Quoties
enim habemus duas Causas, quarum altera est licita, & per-
missa , altera verò iniqua, & abominabilis, ea omnino venit
amplectenda, per quam delictum penitus excludatur , vt
per *Text. in cap. in pénis de regul. Iur. & in l. Interpretatione 42. ff. de pénis* Monent *Bald. in l. i. num. 10. Cod. de fer. fugit. Censal. in l. unica §. 1. num. 36. vers. quod si plures extiterint Causa C. si quis imperatori Maled., Handed. conf. 105. num. 60. lib. 1. Crauett. conf. 8. num. 2. & conf. 319. num. 1. Andreol. contr. 66. num. 24. Mastard. de probat concl. 814. num. 8. vol. 2. Conciol. allegat. 87. numer. 24. Rota Januen. voto 11. num. 5. & 6. post. censal. in d. l. unit.*

Absquè eo , quòd talis licita Causa exclusa remaneat tam ex
Epistola per Franciscam Pompiliam Abbatii Paulo scripta,
in qua grates eidem rependendo, quòd eam Matrimonio
coniunxerit cùm eius fratre, genitores insimulabatur, quod
eidem pessima Consilia insinuarent totam domum perden-
di , & Vrbem cùm Amasio repetendi, quodquè per eorum
discessum tranquillam , quietamque vitam ducebat ; Quàm
etiam ex societate Domini Canonici Iosephi Caponsacchi,
cùm quo sugam arripiuit , propter quam fuit ipse in Ciuita-
te Vetula per triennium Relegatus .

Nàm quoad assertam Epistolam quicquid sit , an subsistat , &
verisimilis existimanda sit, qualitas per eandem Pompiliam
in suis constitutis adiecta , quòd scilicet Maritus designauer-
it elementa , eaquè super inducto calamo fuerint atramen-
to notata , ex quo ipsa scribere nesciebat ; Certum est, quod
si ea attentè legatur , impossibile omnino erit afferre , ip-
sam & quo animo fuisse conscriptam ; *Quis enim filialis amo-*
ris , & obseruantia erga parentes adeò immemor inueniri
poteſt , vt ſibi metiſpi perſuadeat teneram pueram tunc
temporis decimum quartum ætatis annum non excedentem
vt ex fide Baptiſmi data in Summ. Fisci ſecundæ proposi-

*qui negaverunt
la aperte*

tionis Causæ num. 2., & extrà proprios lares ex proximo
discessu Genitorum adhuc marentem, ac in Domo viri pes-
simè habitat, vt præseferrè videntur continuæ querimo-
niæ, & recursus nedum ad Reuerendiss. Episcopum, sed
etiam ad Dominum Commissarium facti, potuisse contrà
Genitores dætestabilia crimina impingere, ac de eis Mariti
fratrem sibi infensissimum certiorèm facere, nisi, vt ipsamet
ingenuè fassa fuit in suis constitutis, coacta fuisset à virò,
cui propter nimiam ipsius leuitiam sæpiissimè præcedenter
expertam absquè euidentissimo mortis periculo reluctare
minimè poterat, quæ sanè inuerisimilituda sicuti est apta
legentibùs horrorem incutere, ita pariter optimè ostendit
epistolam non voluntariè, sed coactè scriptam fuisse, vt
aduertunt *Farinac. conf. 22. numer. 34. ante med. lib. 1.* &
conf. 60. num. 31. in fine, Cabal. resolut. crim. cas. 199. nu-
mer. 36. vbi quod non est admittendum quod nemo sanus
probaret Vermigl. conf. 3. num. 6. & 7.; Quinimò ista ni-
mia cautela extorquendi dictam Epistolam ab vxore, eu-
identem arguit in ipso dolum, eamdemque affectate procu-
ratam fuisse, vt sedaret animum eiusdem Abbatis Fratris,
qui assiduis lacestis quærimonijs ob mala tractamenta er-
ga vxorem, quotidie de ijsdem redarguere non cessabat d.
Guidonem, vt insimilibus terminis aduertit *Cassan. ad Con-*
suet. Burgund. fol. ushi 2. num. 13.

Quo verò ad Societatem D. Canonici Caponsacchi, ea pariter
non videtur apta ad inhonestatis maculam constituendam;
Cùm enim infelicissima mulier esset prorsùs omni munda-
no auxilio destituta, frustraque auctoritatem Reuerendiss.
Episcopi, ac Domini Commissarij ad se à vitæ discrimine
liberandam implorauerit, propriæque ætati, ac sexui non
conueniret, vt sola, vel in societate alicuius vilis Mulier-
culæ fugam arriperet incautè se grauoribus periculis expo-
nendo, prout contingere potuisset, si per viam sola depræ-
hensa fuisset, itaùt de ea dici posset.

Incidit in Scillam cupiens euitare Charybdim.
Mirum propterea esse non debet, si D. Canonicum præd. in
Comitem assumpsit, qui adhunc effectum sibi propositus
fuit tám à D. Canonico de Comitibus, quám à Domino Gre-
gorio Guillichino Marito Pompiliæ affinitate coniunctis,
quos

quos incredibile omnino est tali fugæ consensisse , si non agnouissent illam omnino necessariam ad euadendum mortis periculum , quod imminere infelicissimæ mulieri erant optimè concij , & si de honestate , & integritate comitis summoperè non fidissent ; Ideoquè urgente tali necessitate prudens electio minoris mali , quamcumque prætensiæ in honestatis umbram eliminat , vt tradunt *Bald. in leg. filium num. 1. ff. de his , qui sunt sui , vel alieni Iuris , & in l. 1. num. 35. C. de ijs , qui acc. non possunt , Menoch. de præsumpt. lib. 6. præsumpt. 54. num. 22. & 23. de arbitr. lib. 2. cas. 89 num. 23.*

Attento præsertim modo , quo fuga sicut executioni demandata , iter ad Vrbem arripiendo recto tramite , & cum maxima celeritate , quod benè ostendit , unicum motiuum fuisse vitam in tuto ponere , non etiam eam libidinosis oblectamentis deturpare ; si enim hæc fuisset Causa principalis , profectò , vel non recto tramite Romanum appulisset , vbi à Cognato , & Parentibus , statim depræhendi potuisset , sed in longinquiores Regiones se contulisset , vel non scùm tanta celeritate , sed moram traxisset extrà publicam viam , & in loco , in quo , & per Maritum non potuisset inueniri , & propriam libidinem ad satietatem explere valuisse .

Quæ vtiquè maxima inuerisimilitudo , optimè ostendit veritatem Causæ per Mulierem in suis constitutis adductæ , quod scilicet ad Vrbem celeriter se contulerat , vt ibi penes proprios Parentes vitam , & honestatem in tuto collocaret , sicuti enim ex verisimili maximum oritur Indicium culpæ , ita pariter non minor ex inuerisimilitudine oriri debet innocentia præsumptio , vt monent *Farinac. conf. 22. num. 34. & de falsis quæst. 153. numer. 176. Caball. resol. crimin. Caf. 149. numer. 35. Vermigliol. conf. 31. numer. 5. & conf. 256. numer. 101. Concilio. resol. crim. 27. numer. 2.*

Idquè benè suadetur ex ingenua protestatione facta per Canonicum ipsimet Marito , in actu appræhensionis in hospitio Castri Noui illum de huiusmodi fuga obiurganti ibi — *Sono Galani' uomo , e quello che ho fatto l'ho fatto per leuare tua Moglie dal pericolo di morte — vt deponit Iacobus quondam Simonis Testis Fiscalis Proc. fugæ fol. 50. exemplo adducto in mea allegatione supèr fuga , Scipionis scilicet*

Affricani, qui cum à suis militibus fuisse capta pulcherissima Iuuenis Vxor Allucij Principis Celtiberorum, illam marito restituendo dixit -- *fuit Sponsa tua apud me eadem, quæ apud Socros suos, parentesque suos, verecundia seruata est tibi ut in uiolatum, & dignum me, tequè dari tibi donum posset* -- ut testatur Titus Liuius in suis Historijs lib. 26. fol. mibi 493.

Et licet valde difficile sit venustam mulierem in Societate Cupidi Iuuenis itinerantem honestatis decorum seruare, id tamen nequaquam est impossibile, ut praefere videntur exempla relata in eadem mea allegatione §. *Quidquid dicat, quibus addo illud Penelopis, de qua cecinit Ouidius lib. 3. elegiarum.*

Penelope mansit (quamuis Custode Careret)

Intertam muleos intemerata procos.

Prætimum cum Iter non fuerit voluntarium, prout neque Societas D. Canonici, sed solum ad euadendum mortis periculum, vnde concurrente huiusmodi necessitate, inapplicabilis prorsus redditur præsumptio, ex Ouid. de Arte amandi deducta, quod.

A Iuene, & Cupido credatur redditia virgo.

Prout nec etiam ad petitam Sententiam retardandam, & dishonestas notam inducendam in Franciscā Pompilia, quidquam obstat videntur quamplures Epistolæ in latrina hospitiij Castri Noui repertæ, quæ pretenduntur per eandem conscriptæ D. Canonico propter seruentissimum Amorem, quo illum prosequebatur, subsistunt quippè exceptiones, & responsiones in præteritis Informationibus adductæ; Prima scilicet, quod non fuerunt recognitæ, nec probata fuit identitas characteris, & adsit incertitudo, cum non constet, cui fuerint directæ, nec sit inuerisimile quod configi potuerint à marito, qui capturæ, & perquisitioni semper adflitit, & qui forsan sperabat ex eis facilius resultare posse impictum Adulterij crimen, & super quo summopere insistebat, ut optatam dotem, & lucrum superlucrari potuisset, itaut hæc sola possiblitas in contrarium sufficiat ad elidendum Iudicium, quod prætenditur ex eisdem defumi Rota coram Ludouij. decision. 352. numer. 2. coram Manzaned. decision. 570. numer. 2. & sequen. & in recent.

recent. decision. 64. numer. 25. p̄t. 17. recent. Et secunda, quod licet tales exceptiones non subsisterent, adhuc ex eis in honestatis, & violatae coniugalnis fidei deduci nequit argumentum; Quamuis enim ex litteris Amatorijs resultare valeat Adulterij inditium, illud tamen in casu nostro prorsus elatum remanet, dum cognoscitur eas tetendisse ad licitum finem, scilicet ad alliciendum Canonicum, ut sibi opem in fuga praestaret, & vitæ discrimen evitaret, tunc enim, sicuti permisus est finis, ita quoque permisso, & licita existimari debent media, quamvis suspicione non carentia, ea enim non per se sola, sed propter finem considerantur, ut aduertit *Gratian. discpt. forens. cap. 580. numer. 8. Gobb. confil. 119. numer. 72.* Quinimodo nisi ex litteris amatorijs implicita fornicationis confessio resultet, non valet ex ipsis Adulterij presumptio deduci, ut declarando Doctores contraria sententiam tuentes monent *Sanchez. de matrim. lib. 10. sit. de Diaort. disc. 12. quest. 3. numer. 48.*, eo que relato, *Moller. de Cornut. cap. 7 numer. 24.*

Validissima præsertim attenta consideratione tum propriæ continentia, tum integritatis eiusdem Canonici, de quo multum fidebat, & sperabat, secum modestè in irinere se habiturum, dum ex eisdem Epistolis apparet, alias illius licentiam obiurgasse ibi -- *E mi merauiglio, che voi, che siete tanto caffo, hauete composto, e copiate cose tanto poco honeste, & infra ibi -- mà io non vorrei, che voi faceste così in ogni cosa, come hauete fatto in questi libri, che il primo è stato honesto, e quest'ottavo tutto il contrario, che voi da tanti honesto che siete, diuentaste tam'ardito, il che non credo --* Huiusmodi enim sincera obiurgatio, & tenor Epistoliarum, in quibus nihil in honestatis legitur, optimè ostendunt, atque declarant animum Pompiliæ scribentis, ac propterera sicuti verba intelligenda sunt iuxta intentionem proferentis, ita à pari Epistolæ iuxta intentionem scribentis veniunt interprætandæ, ut per *Testum in cap. Intelligenzia, & cap. Præterea de verbor signific. tradunt Oldrad. conf. 9. numer. 3. Surd. conf. 431. numer. 35. Molin. de Rit. Nupt. lib. 3. quest. 85. numer. 50.*

Vin-

Vindicata igitur honestate , & pudicitia Pompiliz à fuga , & Epistolis , leuioris ponderis sunt alia prætentæ inhonestatis indicia , quatenus deducantur ex accessu D. Canonici ad eius Domum ad effectum eam alloquendi , ex modo insidioso , quo fuga fuit præparata , & exequutioni demandata , mediante somnifero viro & domesticis propinato , mutua deosculatione in itinere , & ex Condormitione in hospitio Castri noui , vtrà enim Generalem responzionem , quod de his omnibus nulla concludens affertur probatio , prout opus esset ad constituendam Pompiliam de Adulterio Ream , peculiariis vnicuique occurrit responsio .

Siquidem ingressus , & egressus de tempore nocturno in domum Franciscæ non resultat , nisi ex depositione vnius tantum Testis , scilicet Mariae Margharitæ de contentis , quæ cùm duas relevantissimas exceptiones patiatur , nempe vnicitatis , & meretricij , eius dictum nullam infamiz notam irrogare valet , vt respectu meretriciaz qualitatis tradunt Marsil. conf. 102. num. 9. Vermigliol. conf. 408. num. primo , Crot. de Testib. part. 3. numer. 46. Mascard. de probat. conclus. 1362. num. 20. , & respectu vnicitatis Farinac. de Testib. quæst. 64. num. 28. , & 33. , Vermigl. conf. 146. numer. 3. , D. Canonicus Ravnaldus in finzax. rer. Criminal. tom. primo cap. primo §. 10. numer. 118. , & cùm talis accessus tenderet ad vnicum finem conueniendi super fuga , & subtrahendi infælicem Mulierem à nimis proximo mortis periculo , non est ad malum finem præsumendum ; Quoties enim constat de causa expressa , ad quam potest referri , eaque est omnino licita , illicita , & criminosa non venit tribuendum , vt ex Textu in l. merito ff. pro socio tradit in terminis Crauet. conf. 205. n. 7. , & 8.

Modus verò insidiosus , quo deuenit ad fugam dicta Francisca Pompilia , somniferum præparando , nedum Viro , sed omnibus Domesticis , vtrà quod non probatur , quatenus probaretur , potius sagacitatis , quæm in honestatis præberet argumentum , cum nimis fatua fuisset Vxor , si fugam absque huiusmodi cautela tentasset .

Eodemque defectu probationis laborat asserta mutua deosculatio in itinere habita , cùm parum tuta sit illa , quæ resultare prætenditur ex vnius vilissimi Testis depositione ;

Maximè

Maximè dum eius dictum nimis animosum detegitur; deponit quippè vidisse, dum Chisium ducebat velociter nocturno tempore, Franciscam Pompiliam, & Canonicum se mutuò deosculantes non redditia ratione, quod Luna luceret, vel quod adesset aliquod artificiale lumen tenebras depellens, quæ sanè circumstantia, quemadmodum est omnino necessaria in Teste de facto nocturno deponente, ita illius omisso omnem fidem illi adiunxit, vt monente *Bursatt. consil. 34. numer. 6.*, *Vermigliol. consil. 74. numer. primo*, *Giurb. consil. Criminal. 37. numer. 41.*, *Farinacc. question. 66. numer. 38.* *Polidor. Ripa in tractat. de noctur. tempor. cap. 57. numer. 7.*, *D. Canonicus Rainald. tom. pri-
mo cap. 11. §. 8. ad 13. numer. 8.* Addita ulterius maxima inuerisimilitudine, quod dum Chisium ducebat ea velocitate, vt potius volatum, quām cursum imitaretur, potuerit retrò sē voluendo mutuam deosculationem intueri; Magisque augetur talis inuerisimilitudo ex eiudem Testis dicto, dum deponit duxisse Franciscam Pompiliam, absque eo, quod cognosceret eam esse tam, nisi postquam regrediens Aretium, obuiam habuit Guidonem Francischinum illius Maritum eandem insequentem, ac propterea si eam vidisset deosculari, profectō illicē recognouisset, cūm anteā pluriē illam viderit, eaque sibi fuerit bē cognita; Ideoque asserendum omnino venit, quod vel tædio Carceris secreti affectus ad ita deponendum coactus fuerit, vel quod, vt verisimilius est, cūm ex velocissimo Chisij cursu contingere potuerit collisio sedentium in eo, crediderit casualem approximationem utriusque Capitis, & Faciei, tetendisse ad malum finem basia captandi, vndē meritō præsumptio ex eius depositione resul-tans, fuit in Procesu fugæ contempta, quæ alias si aliquam uerisimilitudinem inuolueret, in consideratione habita-fuisset.

Tandem longè debilior est præsumptio in honestatis desumpta ex asserta condormitione in eodem Hôspitio Castris Noui, cūm tam per Pompiliam, quām per Canonicum fuerit in eorum constitutis constantissimè negata, solumque de ea deponit eiusdem Hospitij Cubicularius Testis vnicus, non quidem de certa scientia, sed præsumptiuè, ex quo illum

illum requisierint de Cubiculo cum vnicō lectulo, & quia Dominus Canonicus ingenuè fatetur causam, propter quam vnicum lectum parare fecit, vt scilicet Francisca Pompilia, ob eius malam valetudinem, & præcipitosi itineris incommoditate, parum quiesceret, ipso ad ipsius custodiam vigilante, talis actus non debet trahi ad causam illicitam, vt in terminis monet *Crauest. citat. consil. 205. numer. 9.*, & seqq., vb. *numer. 15.*, ait, quod ad humaniorem partem semper est habenda interpretatio, quamvis rigorosa videatur, & si, vt prosequitur idem Auctor *numer. 20.*, & 21. Non sufficeret ad plenam probationem Adulterij, quod quis repertus sit solus cum sola, & nudus cùm nuda, & quod Iuuenis inueniatur in Cubiculo clauso cùm Muliere dispectoratus, & Caligisolutis, quanto minus talis præsumptio insurgere valet ex breuissima mora in eodem Cubiculo custodiæ causa.

Parum refragante, quod Francisca Pompilia in eius examine occultauerit huiusmodi moram, asserendo ad Hospitium peruenisse in Aurora, quoniam, cùm ipsa esset optimè conscientia de eius Viri credulitate, id forsitan asseruit ad prorsus auertendam violatæ fidei suspicionem, quæ certè oriri potuissest, si longiorem moram in Hospitio traxisse fassa fuisset; Vnde si talem moram non negasset, cum circumstantijs tamen seruataim pudicitiam fraudentibus, nullum præiudicium eidem attulisset confessio, ita pariter nec mendacium præiudicare valet, vt tradunt *Marfil. consil. 15. numer. 15.*, *Berizzol. consil. 59. numer. 7. lib. primo*, *Vermigl. conf. 45. numer. 20.*, & *conf. 273. num. 7.*, *Farinac. consil. 192. n. 11. ad med. ver. st. um etiam*, & *conf. 222. n. 14.*, & *quaest. 52. n. 14.*, & seqq.

Ceterum quamcumque prætentæ in honestatis suspicionem, prorsus eliminat assertio infelicissimæ Mulieris in Articulo mortis emissa, postquam plura lethalia vulnera per Virum inflicta fuere, quod nunquam coniugali fidei defecerat, vt optimè constat ex quamplurimis depositionibus Religiosorum Virorum, qui eidem in articulo mortis ministabant, asserentium ipsam semper à Diuina Clementia exoptantem audiuisse, nè pro tali peccato venia concedebatur, quæ vtique assertio in articulo mortis emissa, omnem

nem fidem meretur, cùm nemo in eo statu constitutus, præsumatur adeò immemor Salutis æternæ, vt mentiri velit, vt tradunt Natta consil. 537. numer. 18. lib. 3. Calder. consil. 15. tit. de usur., Menoch. de præsumption. lib. 5. præsumpt. 5. numer. 3., Farinacc. quæst. 196. numer. 31., Decian. traff. Crim. lib. 5. tit. de defens. Reor. cap. 37. n. 27. Card. de Luc. de Regal. disc. 119. numer. 24, & de legat. discurs. 27. num. 10.

Demùm nullum fundamentum ad redarguendam præfatæ Franciscæ Pompiliae memoriam de inhonestâ vita constitui potest super asserto decreto huius Illustrissimæ Congregationis, per quam condemnatus fuit Dominus Canonicus Caponsacchius in Triennalem Relegationem in Ciuitate Vetula, cum expressione deuiationis, ac cognitionis carnaлиis eiusdem Franciscæ Pompiliae, ultrà quamquod enim, vt admittit ipsemet Fiscus, me instantे fuit demandata, licet non extensa illius moderatio per Dominos Judices Illustrissimo Domino meo approbante, & ob id in mandato de excarcerando, subticendo dicta verba, fuerunt apposita alia : *Pro Causa, de qua in actis.*

Remouetur quæcumque difficultas ex sola ponderatione, quod tale decretum emanauit, nondùm assignatis defensionibus eidem Franciscæ Pompiliae, eaque pœnitùs inaudita, quæ de illo nullam minimam notitiam habuit, cum eidem non fuerit notificatum ; Quinimò in decreto assignationis domus loco Carceris fuit tantùm expressa causa relativa ad acta ; Vndè eidem obesce non poterat, tanquam emanatum contrà Tertium ipsa non citata ad Textum in leg. de unoquoque, & in leg. sacerdot. ff. de re iudic. firmauit Rota coram Dunozett. Jun. decisi. 797. numer. 4., & in recent. decisi. 392. numer. 5. part. 18. recentior. Et in terminis quod sententia lata contrà Adulterum non noceat Adulteræ non citatae, est Text. in leg. denunciatione. vltimo ff. ad leg. Iul. de Adulter. vers. si condemnatus, ibi : *Si condemnatus fuerit, Mulier per eum non est condemnata, sed aget causam suam &c.* & tradit Caroc. de exception. except. 97. numer. primo, & seq.

Potissimum cum modò non agatur de absoluendo Marito ab uxoricidio, ac inducendo iustam causam à credulitate inho-

inhonestatis Vxoris ex dicto decreto resultante à pena
leg. Cornelie, illum excusantem, quo casu immutatio præ-
dicti Decreti poterat forsan inferire de vento, sed de
damnanda memoria Mulieris defunctoræ, & de irrogando
eidem, ac Familia infamiam, quo casu, sicuti non poterat
contumaciale decretum eidem obesse in Vita, ita pa-
riter, nullum præjudicinm afferre valet post mor-
tem.

Quare &c.

Antonius Lamparellus Procurator
Charitatis.

Et jf leivas d. Cato fraterj ystiniuec. iij.
17 May 1698. ratio Congregationis (minima
post duas restitutions adiungend= pro absolus=

17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30.

五、生态学

卷之三

12. *Leucosia* sp. (Diptera: Syrphidae) was collected from the same area as the *Chrysanthemum* plants.

10. *Leucaspis* sp. (Hymenoptera: Encyrtidae) was collected from *Psylla* sp. nymphs.

10. *Leucaspis* sp. (Hymenoptera: Encyrtidae) was collected from *Psylla* sp. nymphs.

10. The following table shows the number of hours worked by each employee in a company.

...and the world will be delivered to you.

W. H. G. - 1900

卷之三

10. The following table gives the number of hours worked by each of the 1000 workers.

1990-1991
1991-1992
1992-1993
1993-1994
1994-1995
1995-1996
1996-1997
1997-1998
1998-1999
1999-2000
2000-2001
2001-2002
2002-2003
2003-2004
2004-2005
2005-2006
2006-2007
2007-2008
2008-2009
2009-2010
2010-2011
2011-2012
2012-2013
2013-2014
2014-2015
2015-2016
2016-2017
2017-2018
2018-2019
2019-2020
2020-2021
2021-2022
2022-2023
2023-2024

10. The following table shows the number of hours worked by 1000 employees in a company.

Illust^{ris}. & Reuerendiss. D.
G V B E R N A T O R E
IN CRIMINALIBVS
S I V E
Excellentiss. Domino
V E N T V R I N O
Romana.

P R O

D. Hærede Beneficiato q. Franciscæ
Pompilia olim vxoris q. Guido-
nis Francischini.

C O N T R A

Fiscum, & litis Consortes.

Facti D. Procuratoris Charitatis.

Romæ, Typis Reu. Cam. Apost. 1698.

INSTRVMENTVM

SENTENTIÆ DEFINITIVÆ

Latæ pro reintegratione famæ , & existimationis quondam Franciscæ Pompiliæ , olim Vxoris quondam Guidonis Franceschini de Aretio ; necnon absolucioniæ ad fauorem D. Dominici Tighetti vti hæredis beneficiati eiusdem Franciscæ Pompiliæ ab omnibus inquietationibus , molestationibus , vexationibus , & perturbationibus illatis , & inferri comminatis à Venerabili Monasterio S. Mariæ Magdalenæ Conueritarum ad Cursum ; vnà cùm Citationibus legitimè executis pro seruatione quatuor Terminorum ad docendum de appellatione , illiusque legitima prosequitione , vt eadem sententia transiret , prout transiit , in iudicatum ob non interpositam appellationem .

IN DEI NOMINE. AMEN.



Nno Domini millesimo sexcentesimo , nonagesimo octauo , Indictione Sexta , Die verò nona mensis Septembri Pontificatus autem Sanctissimi in Christo Patris , & D. N. D. Innocentij Diuina Prudentia Papæ Duodecimi anno eius octauo . Hæc est copia , siue transumptum infrascriptarum Citationum , & Sententiæ per acta mei factarum , & latæ respectiue , tenoris sequentis , videlicet .

Illustrissimo , & Reuerendissimo D. Gubernatore
in Criminalibus .

Citentur infrascripti exaduerso principales , & aliâs omni &c. ad comparendum in Congregatione Criminali Die crastina , quæ erit 19. currentis hora solita Congregationis , necnon videndum reiterari omnes , & singulos terminos substantiales male forsitan , nulliter , & indebet tentos , habitos , atque serua os in vim quarumcumque facultatum , absoluimus instantem à censuris , quantum &c. concludendum , concludique videndum in causa , &

audiendam sententiam diffinitiuam in forma ad p. d. instante
D. Dominico Tighetto Hærede Beneficiato quondam Franciscæ
Pompilie vxoris quondam Guidonis Francischini principali,
sive &c.
Charitas Notarius.

Illustrissimus D. Franciscus de Gambis Fisci, & R.C. A. Procurator Generalis.

D. Ioannes Maria Serbuccius Procurator, & Dominus litis effectus
q. Guidonis Francischini.

D. Franciscus de Paraccianis Procurator Venerabilis Monasterij S.
Mariæ Magdalena Conuertitarum ad Cursum pro omni &c.

Exaduerso D. Procurat. Fiscalis Gen. & dixit non posse aliquā dari
sententiam nisi ad fauorem Fisci, & quatenus, &c. Instat sibi
dari Dubium ad effectum &c., & interim non deueniri ad ali-
quam expeditionem causæ, nisi relata causa in plena Congrega-
tione, & de voto Dominorum de illa, ac constituto aduersario
in carceribus, citatisque omnibus interesse habentibus alias &c.
hac die 18. Augusti 1698.

Franciscus de Gambis Fiscalis Generalis.

Feci personaliter contra Fiscum dicta die, & domi dimissa copia
contra alios 18. Augusti 1698. **Balatresius.**

Aloysius Pichius Substitutus Fiscalis Generalis.

Die decima nona Augusti 1698. Relatione facta comparuit **D. Antonius Lamparellus** Procurator, & petiit; vt supra: ex tunc
per Illustr. & Excellentiss. **D. Marcus Antonius Venturinus**
I. V. D. Illustriss. & Reuerendiss. D. Almae Vrbis Guberna-
toris in Criminalibus Locumtenens sedens. &c. sententianuit,
prout in cedula, quam præ manibus accepit, vidit, legit, &
subscriptis, & ad publicandum mihi Notario tradidit, & con-
signauit tenoris &c. & ita &c. presentibus DD. Antonio Bernar-
dino Piceno, & Antonio Toparino de Caprarola Testibus &c.
Pro **D. Dominico Tighetto**, nomine &c. contra Fiscum, & litis
consortes.

CHRISTI nomine Inuocato pro Tribunalii sedentes, & solū Deum
præ oculis habentes per hanc nostram definitiuam sententiam,
quam de Iuris peritorum consilio ferimus in his scriptis in causa,
& causis, quæ coram nobis in prima, seù alia veriori verse fuerūt,
& vertitur instantia inter **D. Dominicum Tighettum** vt hæredē
beneficiatum quondam Franciscæ Pompilie vxoris quondam
Guidonis Francischini de Aretio ex una, & Fiscum, ac **D. Ioan-**
nem Mariam Serbuccium vt Procuratorem, & Dominum
litis effectum quondam eiusdem Guidonis Francischini, nec
non Ven. Monasterium Sanctæ Mariæ Magdalena Conuertita-
rum ad Cursum pro omni suo iure, & interesse partibus ex alte-
ra, de, & super prætenso Adulterio commisso per dictam quon-
dam Franciscam Pompiliam cum **D. Canonico Iosepho Maria**
Caponiacchio, rebusq; alijs in actis cause, & causarum huiusmodi

latius

latiōis deductis &c. vigore decreti remissionis causæ facti ab Illu-
striss. , & Reuerendiſ. D. Auditore SS. per acta Paschasijs , de
quo in actis &c. relata causa in Congregatione , & de voto eius-
dem dicimus , pronunciamus, declaramus, ac diffinitiū senten-
tiamus ex nouiter deductis NON CONSTARE DE DICTO
PRÆTENSO ADVLTERIO , & propterea memoriam eius-
dem Franciscæ Pompiliae OMNINO' restituendam fore, & esse
pristinæ famæ , & existimationi , eumdemque D. Tighettum ,
nomine , quo suprā , ex haſtenus deductis absoluendum , & li-
berandum fore, & esse ab omnibus , & singulis inquietationibus ,
& molestationibus , vexationibus , & perturbationibus harum
occasione illatis , aut inferri comminatis , prout harum serie
restituimus , & respectiuē absoluimus , & liberamus , vt suprā , &
pro restituta , & respectiuē absoluto , & liberato haberi volu-
mus , & mandamus , & processum , ſeu proceſſuſ quoscumq; defu-
per fabricatum , ſeu fabricatos eſſe abolendum , ſeu abolendos ,
prout abolemus , & caſſamus , perpetuum silentium eidem
Fisco , & litis consortibus imponendo ; & ita Dicimus , pro-
nunciamus, declaramus, ac diffinitiū sententiamus , non ſolum
&c. ſed & omni &c.

Ita pronunciaui ego Marcus Antonius Venturinus Locumtenens .
Lata hac die 19. Auguſti 1698. præſentibus DD. Antonio Bernar-
dino Piceno , & Antonio Toparino de Caprarola Testibus &c.

*Illuſtriffimo Vrbis Gubernatore in Criminalibus , ſive
Excellentissimo D. Venturino .*

Citentur Infrascripti ad docendum de Appellatione, eiusque legiti-
ma proſequitione primo pro prima ad p. d. Instante D. Dominico
Tighetto hærede beneficiario quondam Franciscæ Pompiliae,
olim vxoris qu. Guidonis Francischiini principalis , ſive &c.
Charitas.

D. Ioannes Maria Serbuccius vti Procurator , & Dominus litis ef-
fectus dicti qu. Guidonis Francischiini exaduerso principalis .
D. Franciscus Paraccianus exaduerso Procurator Venerabilis Mo-
naſterij , & Monialium Sanctæ Mariæ Magdalenaæ Conuertita-
rum ad Cursum pro omni &c.

Feci domi d.c.31. Auguſti 1698. Molinellus.

Die prima Septembris 1698. Relatione facta comparuit R.D. Ale-
xander Cassar Procurator Subſtitutus Charitatis petijt , & obti-
nuit , vt ſuprā .

*Illuſtriffimo Vrbis Gubernatore in Criminalibus , ſive
Excellentissimo D. Venturino .*

Citentur Infrascripti ad docendum de appellatione, eiusque legiti-
ma proſequitione , 2. pro 2. ad p. d. instante D. Dominico Ti-
ghetto Hærede Beneficiario quondam Franciscæ Pompiliae olim
vxoris quondam Guidonis Francischiini principalis ſive &c.
Charitas.

DI

D. Ioannes Maria Serbuccius vti Procurator, & Dominus litis effectus dicti quondam Guidonis Franceschini exaduerso principalis.
D. Franciscus Paraccianus exaduerso Procurat. Ven. Monasterij, & Monialium S. Mariae Magdalena Conuertitarum ad Cursum, pro omni &c. Feci prima Septembris 1698. Molinellus.

*Illusterrimo Vrbis Gubernatore in Criminalibus, siue
Excellentissimo D. Venturino.*

Die tertia Septembris relatione facta comparuit R. D. Alexander Cassar Procurat. Substitut. Charitatis petijt, & obtinuit, vt sup. Citentur Infrascripti ad docendum de Appellatione, eiusque legitima prosequutione 3. pro 3. ad p.d. instanti D. Dominico Tighetto Hærede Beneficiato quondam Franciscæ Pompiliae, olim vxoris quondam Guidonis Franceschini principali, siue &c.

Charitas.

D. Ioannes Maria Serbuccius vti Procurator, ac Dominus litis effectus dicti quondam Guidonis Franceschini exaduerso principalis.

D. Franciscus Paraccianus exaduerso Procurator Venerab. Monasterij, & Monialium Sanctæ Mariæ Magdalena Conuertitarum ad Cursum pro omni &c.

Feci tertia Septembris 1698. Molinellus.

Die quarta Septembris 1698. Relatione facta comparuit R. D. Alexander Cassar Procurator substitutus Charitatis petijt, & obtinuit, vt suprà.

Gubernatore in Criminalibus, siue Excellentissimo D. Venturino.

Citentur infrascripti ad docendum de Appellatione, eiusque legitima prosequutione 4. pro 4., & ultima dilatione, & decretum &c. ad p.d. Instante D. Dominico Tighetto hærede beneficiato quondam Franciscæ Pompiliae olim vxoris quondam Guidonis Franceschini principali, siue &c.

Charitas.

D. Ioannes Maria Serbuccius vti Procurator, & D. litis effectus quod Guidonis Franceschini exaduerso principalis.

D. Franciscus Paraccianus vti Procurator Venerabilis Monasterij, & Monialium S. Mariae Magdalena Conuertitarum ad Cursum pro omni &c. Feci 4. Septembris 1698. Balatresius.

Di 5. Septembris 1698. Relatione facta comparuit R.D. Alexander Cassar Procurator Substitutus Charitatis petijt, & obtinuit, vt suprà.

Quam quidem Copiam ego Dominicus Barloccius Curia Causarum Criminalium Tribunalis Illustriss., & Reverendiss. D. Almæ Vrbis Gubernatoris pro Charitate Notarius, licet per alium mihi fidum ex suis proprijs originalibus extracta, cum quibus facta collatione concordare inueni salua semper &c. in fidem præmissorum subscripti, & publicauit requisitus.

Loco ✕ signi prædicti Notarij.

The life in me abolished the death of things,
Deep calling unto deep: as then and there
Acted itself over again once more
The tragic piece.

* * *

our human speech is naught,
Our human testimony false,

* * *

it is the glory and the good of Art,
That Art remains the one way possible

* * *

Of speaking truth,
But Art,—wherein man nowise speaks to men,
Only to mankind,—Art may tell a truth
Obliquely, do the thing shall breed the thought,

* * *

So may you paint your picture, twice show truth,
Beyond mere imagery on the wall,

* * *

So write a book shall mean beyond the facts,
Suffice the eye and save the soul beside.

TRANSLATION



[i]

A Setting-forth²
of the entire Criminal Cause
against
GUIDO FRANCESCHINI, Nobleman of Arezzo,
and his Bravoes,
who were put to death in Rome,

February 22, 1698,

The first by beheading, the other four by the gallows.

ROMAN MURDER-CASE

In which it is disputed whether and when a Husband may
kill his Adulterous Wife without incurring
the ordinary penalty.

TRANSLATOR'S NOTE

The foregoing reproduction of the Old Yellow Book will suffice for those readers of Browning who are conversant with Italian and Latin. It has seemed well, however, to provide a translation for the rest of his public. The work of translation has been conditioned and guided by the nature of the original volume. Much of it consists of legal argumentation. Its technicality, its unusual type of professional logic, its shrewd sophistries can not be made pleasant reading. Its very terminology is without counterpart in literary English, and at times even in the phrase of the English and American lawcourts. These terms have usually been anglicized (Browning's own practice in such cases) rather than translated. The scope of the present volume does not admit of their explanation for the lay reader. The sophistries of the lawyers are couched in an intricate and elaborate style, and their periods of argumentation have necessarily been broken up before they could be reduced to intelligible English idiom. Professional mannerisms in the introduction of new points of law and of argument, or in the citation of authorities, have been rendered freely. The citations themselves are untranslatable and are therefore omitted. Frequent typographical errors have been corrected in translation only, which will sufficiently indicate the editor's emendations. The punctuation of the original is so bad that it has frequently been ignored. The problem of translation has been rendered the more difficult by the barbarity of the syntax, idiom and diction of the original. Certain Italian colloquialisms are shrouded in obscurity. The love letters, owing to their fragmentariness and studied innuendo, are at times unintelligible. Under these limitations, arising from the nature of the Book, the translator has endeavored to give a faithful but not a servile translation.

C. W. H.

Bracketed, heavy-faced Roman numerals [xiii] indicate the page numberings of the original book in the photo-reproduction. The bracketed word [Citations] is used to indicate the omitted citations referred to above. Brackets elsewhere indicate additions made to the original text for the sake of clearness.

The superior figures interspersed through the text refer to the appropriate notes in the corpus of detailed annotation.

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FEBRUARY 15, 1697 A. D.

Attestation by me undersigned how, in the order of the affairs of the Governors, which are set before His Serene Highness, in the Chancery of the Illustrious Signori Auditori of the Criminal Court of Florence, there appears among other affairs of business, under decision 3549, the following of tenor as written below, that is

Arezzo against

1. Gregorio, son of Francesco Guillichini,²⁰⁵ not described.
2. Francesca Pompilia Comparini, wife of Guido Franceschini,²⁰⁴ and
3. Francesco, son of Giovanni Borsi called Venerino,²⁰⁵ servant of Agosto, Host at the "Canale."

because the second Accused, against her honor and conjugal faith, had given herself up to dishonest amours with the Canon Giuseppe Caponsacchi and with the first Accused, who instructed her, as you may well believe, to part from the aforesaid City of Arezzo, the evening of April 28,¹⁸⁴ 1697. And, that they might not be discovered and hindered, the second Accused put a sleeping-potion and opium¹⁹⁶ in her husband's wine at dinner. At about one o'clock¹⁸⁷ the same night, the said Canon Caponsacchi and the first Accused conducted the aforesaid second Accused away from the home of her husband. As the gates of the city were closed¹⁸⁹ they climbed¹⁹⁰ the wall on the hill of the Torrione; and having reached the "Horse" Inn¹⁹¹ outside of the gate San Clemente, they were there awaited by the third Accused with a two-horse carriage.¹⁹² When Canon Caponsacchi and the second Accused had entered into the said carriage, the word was given by him, the aforesaid first Accused, and they set out then upon [vi] the way toward Perugia;¹⁹³ the said third Accused driving the carriage as far as Camoscia. And while they were traveling along the road they kissed²⁰⁶ one another before the very face of the third Accused.

Still further, the second Accused, along with the first Accused and Canon Caponsacchi, carried away furtively²⁰¹ from the house of the said Guido, her husband, from a chest²⁰⁰ locked with a key, which she took from her husband's trousers [the following articles]: About 200 scudi in gold and silver coin; an oriental pearl necklace worth about 200 scudi; a pair of diamond pendants worth 84 scudi; a solitaire diamond ring worth 40 scudi; two pearls with their pins, to be used as pendants, 6 scudi; a gold ring with turquoise setting worth 2 scudi; a gold ring set with ruby worth 36 scudi; an amber necklace worth 5

scudi; a necklace of garnets alternated with little beads of fine brass worth 6 scudi; a pair of earrings in the shape of a little ship of gold with a pearl worth 16 scudi; two necklaces of various common stones worth 4 scudi; a coronet of carnelians with five settings and with a cameo in silver filigree worth 12 scudi; a damask suit with its mantle, and a petticoat of a poppy color, embroidered with various flowers, worth 40 scudi; a light-blue petticoat, flowered with white, worth 8 scudi; two vests to place under the mantle worth 2 scudi; a pair of sleeves of point lace worth 20 scudi; another pair of sleeves fringed with lace worth 5 scudi; a collar worth 4 scudi; a scarf of black taffeta for the shoulder with a bow of ribbon worth 8 scudi; an embroidered silk cuff worth 14 scudi; two [vii] aprons of key-bit pattern with their lace worth 12 scudi; a pair of scarlet silk boots worth 14 scudi; a pair of woolen stockings, a pair of white linen hose, and a pair of light-blue hose, worth 5 scudi; a snuff-colored, worsted bodice with petticoat, ornamented with white and red pawns, worth 3 scudi; a blue and white coat of yarn and linen, adorned with scarlet and other colored ornaments, worth 10 scudi; a worsted petticoat of light-blue and orange color, striped lengthwise, with yellow lines and with various colors at the feet, worth 14 scudi; an embroidered petticoat worth 9 scudi; a silk cuff worth 5 scudi; four linen smocks for women worth 14 scudi; a pair of shoes with silver buckles worth 8 scudi; many tassels and tapes of various sorts worth 14 scudi; six fine napkins worth 7 scudi; a collar of crumpled silk worth 7 scudi; two pairs of gloves of a value of 4 scudi; four handkerchiefs worth 5 scudi; a little silver snuff-box with the arms of the Franceschini house upon it worth 16 scudi; a coat of her husband Guido, rubbed and rent by the lock of a chest where he kept part of the aforesaid clothing. And they had converted the whole to their own uses against the will of the same, the first Accused and Canon Caponsacchi having scaled the walls¹⁹⁰ of the city in company with the second Accused, as soon as she had committed adultery with them. And the said third Accused had given opportunity for flight to the said second Accused along with the Canon, in the manner told.

Therefore the Commissioner²²⁶ of Arezzo was of opinion to condemn arbitrarily the first Accused to five years' confinement²⁰⁵ at Portoferrio with the penalty of the galleys for the same length of time, not counting the reservation of fifteen days to appear and clear himself; to condemn the second Accused to the penalty of the Stinche²²⁴ for life and to the restitution of what was taken away, with the abovesaid reservation; and that the third Accused be not prosecuted further and be liberated from prison [viii]. But the Criminal Court was of opinion that the first Accused should be condemned to the

galleys during the pleasure of His Serene Highness, with the said reservation. As to the second Accused, who was imprisoned here in Rome, in a sacred place, it suspended the execution. And for the third, who had done no voluntary evil, it gave up further inquiry.²⁰⁸

Again proposed in the said business before His Serene and Blessed Highness with the signature of December 24, 1697.²⁰⁹

The opinion of the Court stands approved.

In sign of which

I, JOSEPH VESINIUS, J. V. D., an official
in the criminal court of Florence,
etc., in faith whereto, etc.

[Pamphlet 1.]

Most Illustrious and Most Reverend Lord Governor:

Count Guido Franceschini, born of a noble race, had married, under ill^{458 463} omen, Francesca Pompilia, whom Pietro and Violante had asserted (even to one occupying a very high office) to be their own daughter. After a little while, she was taken to Arezzo, the country of her husband, along with her foster-parents,⁹⁴ and was restrained from leading her life with utter freedom.⁵¹⁵ Yet she has made pretense that she was hated on the pretext of sterility, as is clearly shown in her deposition during her prosecution for flight from her husband's home. [Cf. p. lxxxv.] Both she and her parents took it ill that they were denied their old free life, and they urged their daughter to make complaint before the Most Reverend Bishop,¹³⁹ saying that she had been offered poison by her brother-in-law.⁵¹ At the departure of this couple, when they were about to return to the City, they most basely instigated her—yes, and even commanded her by her duty to obey them—that she should kill her husband, poison her brother-in-law and mother-in-law, and burn the house; and then with the aid of a lover to be chosen thereafter, she should put into effect her long-planned flight back to the City. (But all this should be done after their departure, lest they might seem to have given her evil counsel.) [Such facts] may be clearly deduced from one of the letters¹¹² presented as evidence in the same prosecution.

When these pseudo-parents had returned home,¹⁰⁰ they declared that Francesca was not born of themselves,¹⁰³ but had been conceived of an unknown father by a vile strumpet.¹⁰⁵ They then entered suit before A. C. Tommati²⁶² for the nullification of the dowry contract.²⁶⁰

Day by day the love of Pompilia for her husband kept decreasing while her affection for a certain priest was on the increase. This affair went so far that on an appointed night, while her husband was oppressed with sleep (and I wish I could say that she had no hand in this, and had not procured drugs¹⁹⁸ from outside), she began her flight from her husband's house toward Rome, nor was this flight without theft of money²⁰⁰ and the company of her lover. Her most wretched husband pursued them,²⁰² and she was imprisoned not far from the City. Then, when after a short time they were brought to trial, the lover was banished²⁷¹ to Civita Vecchia for adultery, and she herself was placed in safekeeping.²⁷⁶ But owing to her pregnancy²⁸³ she returned to the home of Pietro and Violante, where she gave birth to a child²⁹⁹ (and I wish I could say that it had not been conceived in adultery³⁰²). This

increased the shame and indignation of the husband, and the wrath, [x] which had long been stirred, grew strong, because his honor among upright men was lost and he was pointed out with the finger of scorn,²⁵⁷ especially in his own country, where a good reputation is much cherished by men who are well-born. Therefore his anger so impelled the luckless man to fury,²⁵⁸ and his indignation so drove him to desperation, that he preferred to die rather than to live ignominiously among honorable men. With gloomy mind, he rushed headlong to the City,²⁵⁹ accompanied by four companions. On the second night²⁶⁰ of the current²⁶¹ month of January, under the show of giving a letter from the banished lover,²⁶² he pretended to approach the home of the Comparini. When at the name of Caponsacchi the door was opened, he cut the throats of Violante²⁶³ and Pietro, and stabbed Francesca with so many wounds that she died after a few days.

While this desperation continued, his dull and unforeseeing mind suggested no way to find a place of safety.²⁶⁴ But accompanied by the same men, he set out for his own country along the public highway by the shortest route. Then, while he was resting upon a pallet²⁶⁵ in a certain tavern,²⁶⁶ he was arrested together with his companions by the pursuing officers.

Great indeed is this crime, but very greatly to be pitied also, and most worthy of excuse. Even the most severe laws give indulgence and are very mild toward husbands who wipe out the stain of their infamy with the blood of their adulterous wives. [Citations.]

This indeed was sanctioned in the laws of the Athenians and of Solon²⁶⁷ (that is, of the wisest of legislators), and what is more, even in the rude age of Romulus,²⁶⁸ law 15, where we read:

"A man and his relatives may kill as they wish a wife convicted of adultery." [Citations.]

I hold to begin with, that there can be no doubt of the adultery of the wife [for several reasons]. [First], her flight together with her lover during a long-continued journey. [Citations.]

[xi] [Second], the love letters²⁶⁹ sent by each party; these can not be read in the prosecution for flight without nausea. [Citations.]

[Third], the clandestine entry²⁷⁰ of the lover into her home at a suspicious time. [Citations.]

[Fourth], the kisses²⁶⁶ given during the flight (p. 100)²⁷² according to the following sentiment: "Sight, conversation, touch, afterwards kisses, and then the deed [adultery]." [Citations.]

[Fifth], their sleeping in the same room²⁷³ at the inn. [Citations.]

[Sixth], the sentence of the judge,²⁷⁴ who condemned the lover for his criminal knowledge of her, which made this adultery notorious. [Citations.]

Furthermore²⁷⁵ we are not here arguing to prove adultery for the

purpose of demanding punishment [upon the adulteress], but to excuse her slayer, and for his defense; in this case, even lighter proofs would be abundant, as Matthæus advises. [Citations.]

These matters being held as proved, the opinion of certain authorities who assert that a husband is not excusable from the ordinary penalty, who kills his adulterous wife after an interval, does not stand in our way. For the aforesaid laws speak of the wife who has been found in her guilt and has been killed incontinently.⁴⁰⁵ Hence such indulgence ought not to be extended to wife-murder committed after an interval, because the reins should not be relaxed for men to sin and to declare the law for themselves. [Citations.]

[xii] Furthermore, Farinaccius does not affirm this conclusion, but shows that he is very much in doubt, where he says: "The matter is very doubtful with me, because injured honor and just anger—both of which always oppress the heart—are very strong grounds for the mitigation of the penalty." Matthæus well weighs these words on our very point. And both Farinaccius and Rainaldus conclude that the penalty can be moderated at the judgment of the Prince.

I humbly pray⁴⁰² that this be noted. The aforesaid laws, which seem to require discovery in the very act⁴⁰³ of sin, as some have thought, do not decide in that way merely for the purpose of excusing a husband moved to slaughter by a sudden impulse of wrath and by unadvised heat. But they so decide lest on any suspicion of adultery whatsoever, oftentimes entirely without foundation, men should rush upon and kill their wives, who are frequently innocent. Hence the "discovery in the very act of crime," which is required by law, is not to be interpreted, nor to be understood, as discovery in the very act of license, but is to be referred to the proof of the adultery, lest on trifling suspicion a wife should be given over to death. But when the adultery is not at all doubtful, there is no distinction between one killing immediately and killing after an interval, so far as the matter of escaping extreme punishment is concerned. [Citations.]

For whenever a wife is convicted of adultery, or is a manifest adulteress, she is always said to be "taken in crime." [Citations.]

And in very truth the reasons adduced by those holding the contrary opinion are entirely too weak. For murder committed for honor's sake is always said to be done immediately,⁴⁰⁵ whensoever it may be committed. Because injury to the honor always remains fixed before one's eyes, and by goading one with busy and incessant stings it urges and impels him to its reparation. [Citations.]

[xiii] Such relaxation of the reins to husbands, for taking into their own hands the law, would indeed be too great if the law of divorce were still valid. For in that case husbands would not be permitted to make such reparation of their honor. For another way would be

satisfactorily provided for them, namely, in their right to dismiss and to repudiate the polluted wife. In this way they could put far from themselves the cause of their disgrace, yes, and the very ignominy itself. But when by the divine favor our Gentile blindness was removed, and matrimony was acknowledged to be perpetual and indissoluble, those were indeed most worthy of pity who, when all other way of recovering their honor was closed to them, washed away their stains in the blood of their adulterous wives. Petrus Erodus [Citation], after he has discussed a matter of this kind according to the usual practice of Roman Law, adds in the end: "For as all hope of a second marriage is gone so long as the adulteress still lives, we judge that such very just anger is allayed with more difficulty, unless it be by the flight of time"; and therefore such a case, when not terminated by divorce, is usually terminated by murder. For as Augustine says, "what is not permitted, becomes as if it were permitted; that is, let the adulteress be killed, that the husband may be released."

I acknowledge that it is laudable to restrain the audacity of husbands, lest they declare the law for themselves in their own cause; since they may be mistaken. But it would be more laudable indeed to restrain the lust of wives; for if they would act modestly and would live honorably they would not force their husbands to this kind of crime, which I may almost call necessary. Nor can we deny that by the ignominy brought upon them by the adultery they are exasperated and are driven insane, and a most just sense of anger is excited in their hearts. For this grievance surpasses all others beyond comparison, and hence is worthy of the greater pity, according to the words of the satirist [Juv., x, 314]: "This wrath exacts more than any law concedes to wrath."

Papinian also well acknowledges this [Citation] where we read: "Since it is very difficult to restrain just anger." For these reasons, authorities hold that a just grievance should render the penalty more lenient even in premeditated crimes; because the sense of "just grievance does not easily quiet down, or lose its strength with the flight of time, but the heart is continually pierced by infamy, and the longer the insult endures, the longer endures the infamy, yea, and it is increased." [Citations.]

[xiv] And this drives one on the more intensely, because with greater impunity, as I may say, wives pollute their own matrimony and destroy the honor of their entire household. In ancient times,⁴⁰⁰ while the *Lex Julia* was in force, wives who polluted their marriage-bed underwent the death penalty. [Citations.]

Likewise it was so ordained in the Holy Scriptures; for adulterous wives were stoned to death, Gen. 38; Lev. 20:10; Deut. 23:22; Ez. 16.

The solace drawn from the public vengeance quieted the anger and destroyed the infamy. Then the husband, who was restored to his original freedom, could take a new and honest wife and raise his sons in honor. But now, in our evil days, there is a deplorable frequency of crime everywhere, as the rigor of the Sacred Law has become obsolete. And since wives who live basely are dealt with very mildly, the husband's condition would indeed be most unfortunate if either he must live perpetually in infamy, or must expiate her destruction, when she is slain, by the death penalty, as Matthæus well considers. [Citation.]

Therefore, when it is claimed that the husband shall escape entirely unpunished, it is necessary that the wife be killed in the very act of discovered sin. But when the question is as to whether or not a husband may be punished more mildly than usual when driven to wife-murder for honor's sake, it makes no difference whether he kill her immediately ⁴⁰⁵ or after an interval. [Citation.]

Nor does this opinion lack foundation in the very Civil Law of the Romans, for Martian [Citation] asserts that a father who had killed his son while out hunting, because he had polluted his stepmother with adultery, was exiled. Nor had the father found him in the very act of crime, but slew him while out hunting, that is with a pretense of friendliness and by dissimulating his injury. Accordingly he was punished, but not with the usual penalty; for he had killed his son, not in his right as a father, but in the manner of a robber. Hence we can infer that not the killing, but the method of killing was punishable, as we may deduce from Bartolus. [Citations.]

[xv] Still further, ⁴⁰⁴ it is well worthy of consideration that one may kill an adversary with impunity, for the sake of his personal safety, but he must do so immediately and in the very act of aggression, and not after an interval. For the life of one slain may not be recovered by the slaying of the murderer. Accordingly, whatever violence may follow upon the first murder becomes vengeance, which is hateful and odious to the law; for the jurisdiction of the judge is insulted by depriving him of the power of publicly avenging murder. But if by the death of the slayer the one slain could be called back to life, I think there is no doubt that anyone could kill the said slayer; for then such an act would not be revenge, but due defense, leading toward the recovery of the life that had been lost. But even when we are dealing with an offense and injury which does not affect the person of the one injured, it is likewise permitted that one who has been robbed may, even after an interval, kill the thief for the recovery of the stolen goods, provided every other way to recover them is precluded. Likewise, one offended in his reputation should be permitted at all times to kill the one injuring him; for such an act may be termed, not the avenging of an injury, but the reestablishing of wounded honor, which could be healed in no other way. [Citations.]

Furthermore,⁴⁰⁴ as I have said, when one is discussing the subject of self-defense, he is dealing with an instantaneous act; hence the anger conceived therefrom ought to quiet down after a while, according to the warning of St. Paul,³⁸³ Eph. 4: "Let not the sun go down upon your wrath." But when we are dealing with an offense that injures the honor, this is not merely a momentary matter, but is protracted, and indeed with the lapse of time becomes the greater, as the injured one is vilified the more. Therefore, whosoever the murderer follows, it is always said to have been committed immediately. [Citation.]

Relying upon these and other reasons, most authorities affirm that a husband killing his adulterous wife after an interval, but not found in licentiousness, is to be punished indeed, but more mildly and with a penalty out of the ordinary. [Citations.]

[xvi] Caballus testifies that this has been the practice in many of the world's tribunals. Calvin gives other cases so decided. [Citation.] And Cyriacus, who speaks in worse circumstances, adduces numerous other cases, and the authorities recently cited offer many more.

This lenient opinion is the more readily to be accepted because, as I claim, the deed about which we are arguing does not also carry with it (as the Fisc holds) attendant circumstances demanding such a rigorous penalty.

[First] the taking of helpers⁴⁰⁹ to be present at the murders [is not such a circumstance]; because he could lawfully use the help of companions to provide more safely for his own honor by the death of his wife. [Citations.]

[Secondly] the crime is not raised to a higher class because he led with him helpers at a price³¹⁶ agreed upon; for what is more, and is far more to be wondered at, a husband can lawfully demand of others the murder of an adulterous wife, even by means of money, as the following indisputably affirm. [Citations.]

[xvii] Likewise it does not at all disturb [our line of argument] that Count Guido might have killed his wife and the adulterer when they were caught in the very act of flight at the tavern of Castelnuovo, but that he preferred rather to have them imprisoned,²²² seeking their punishment by law, and not with his own hand. We deny that he could have safely killed both of them, inasmuch as he was alone, nor could he attack them, except at the risk of his own life. Because the lover was of powerful strength,²⁹ not at all timid, and all too prompt for resisting, since in the word of one of the witnesses in the prosecution for flight, he was called *Scapezzacollo* [cutthroat]. Nor is it credible that, unless he had been fearless and full of spirit, he would have ventured upon so great a crime, and would have dared to participate in her flight, and to accompany the fugitive wife from the home of her husband. And this fact is more clearly deducible from one of his letters

[cf. p. xcix], in which, after urging Francesca to mingle an opiate in the wine-flasks for the purpose of putting her husband and the servants to sleep, he adds that if they find it out she should open the door; for he would either suffer death with her or would snatch her from their hands. These things indicate both courage and audacity. And though the wife is a woman, that is a timid and unwarlike creature, nevertheless Francesca was all too impudent and audacious, whether because of her hatred for her husband or on account of her anger at the imprisonment of her lover. For she drew a sword ²²⁷ upon her husband in the very presence of the officers who were about to arrest her. And to prevent her from going further, one of the bystanders had to snatch it from her hands. Therefore,²⁰⁷ before their imprisonment, Guido could not put into effect what he had had in mind and what he could lawfully do, because he was alone and his strength was not sufficient. Then when she had been taken to prison, and afterwards was placed in safekeeping, it was impossible for him to vindicate his honor. But when at last she had left the monastery and had gone back to the home of Pietro and Violante, he took vengeance as soon as he could. Therefore we hold that he killed her in the very act,³⁴³ as it were, and immediately. In Sanfelicius [Citation] we read of a case where a husband, though he could have killed his wife immediately, did not do so, but craftily redeemed himself from his disgrace by slaying his wife as soon as possible. And Giurba also speaks of a case where the argument is concerning an injury that was not personal, but real, as was said above.

Guido saw to her capture,²²² and insisted that she be punished, lest she continue her adultery and viciousness, being powerless to do anything else, because his confusion of mind, his helpless fury, and his sense of shame led him unwisely into not taking the law into his own hands and recovering his lost honor. He indeed lodged complaint, but it was because [xviii] he could not kill her. Nor would his ignominy have been wiped out nor his infamy have been destroyed by her imprisonment and punishment. But when indeed after her imprisonment he was still more shut out from noble company,²⁵⁷ his injury ever became the more acute, and it stimulated him the more strongly to regain his own reputation. But his bitterness of mind was increased especially at hearing that she had gone back to the home of Pietro and Violante, who had declared that she was not their daughter, but the child of a dishonest woman;¹⁰⁵ hence his injury was increased by her staying in a home which he suspected, as is said a little further on. Accordingly the same cause kept urging him after her departure from the monastery, as had done so before her imprisonment and the appeals made by Count Guido.

It makes very little difference ⁵⁰² that Francesca was staying in the home of Violante, which had been assigned to her as a safe prison ²⁸⁴

with the consent of Guido's brother.²⁸⁸ For what would it amount to even if with the consent of Guido himself she had been taken from the monastery (yet we have no word of this matter in the trial). For Guido could ²⁹¹ make that pretense to gain the opportunity of killing her for the restoration of his honor. Nor would such dissimulation increase the crime, especially to the degree of the ordinary penalty, since it is certain that the husband may kill a wife stained with adultery, without incurring such penalty. Yet a heavier or lighter penalty is inflicted, just as more or less treachery accompanies the murder, as Matthæus testifies it was practiced in the Senate of Matritensis. [Citation.]

Nor is the attendant circumstance of the place ⁴¹⁹ assigned as a prison worthy of consideration, as if the custody of the Prince had been insulted; for one is not said to be in custody when he is merely detained in a place under security that he will not leave it. [Citation.] Furthermore, this objection ⁵⁰⁰ falls utterly to the ground, for the circumstance of such a place ⁴¹⁹ does not increase the crime, whenever it is committed by one having provocation or for the repelling of an injury. And Marta holds thus in the more serious case of a crime committed in prison. [Citations.]

Furthermore we do not believe, from what is said above, that the penalty can be increased because of the murder of⁴⁰¹ Pietro and Violante, since the same injured honor [xix], which impelled Count Guido to kill his wife, forced him to kill the said parents. And now may the ashes of the dead spare me if what I have urged above, and what I am about to say, may seem to disturb their peace! Neither the flame of hatred nor the impulse of anger (which are far from me) have suggested these charges; but the demands of the defense, which I have assumed without a penny of compensation,³⁷⁶ compel me to employ every means leading to the desired end.

I have said, and I think not without due reason, that the Accused sprang forward to the death of both of them, moved simply by an immediate injury to his own reputation. For a few months after the marriage contracted with Francesca, whom they had professed to be their daughter, they had not blushed to declare that she was not such. Hence there is an inevitable dilemma.²⁸⁹ Either [first] she was in deed and truth their daughter, and then we must acknowledge that in afterward denying her parentage they had inflicted the greatest injury upon the honor and reputation of the Accused; for they had conceived strong hatred and malice against him. Hence they did not hesitate to disgrace their own daughter, in order that they might bring upon him the infamy of having married the daughter of a vile and dishonest woman.¹⁰⁵ This is indeed a fact, that whoever knows Count Guido supposes he has married a girl, not merely of rank unequal to his own, but even of the basest condition, and this greatly injures the reputation of his entire household.

Or else [*second*] Francesca was indeed conceived of an unknown father and born of a dishonest harlot.¹⁰⁵ And it can not be denied that in that case he suffered even greater injury, which branded him with a mark of infamy; both because of her birth and from the fact that daughters are usually not unlike their mothers.¹⁰⁶ Cephalus [Citations] where we read: "From such mingling with harlots it is to be supposed that the people become degenerate, ignoble, and burning with lust." And would that experience had not taught us this fact!

The unfortunate man believed he was marrying the daughter of Pietro and Violante, born legitimately, and yet by the contrivance and trickery of this couple he married a girl of basest stock, conceived illegitimately by a dishonorable mother. From this fact alone the quality of those parents can be inferred, who,¹⁰⁹ for the sake of deceiving those¹⁰⁷ lawfully entitled to the trust-moneys, had made most vile pretense of the birth of a child, [xx] entirely unmindful that they laid themselves liable to capital punishment. [Citations.]

It will not therefore be difficult to believe what Francesca reveals in her letter to her brother-in-law,¹¹² that the abovesaid couple, in spite of the fact that she was well treated, kept instigating her daily to poison her husband, her brother-in-law, and her mother-in-law, and to burn the home. And though these crimes are very base, they gave her still worse counsel, even by her obligation to obey them; namely, that after their departure from Arezzo, she should allure a lover and, leaving her husband's home in his company, should return to the City. In her obedience to their commands, this daughter seemed indeed all too prompt. Who then will deny that such reckless daring, wherefrom a notorious disgrace was inflicted upon the entire household of the Accused, ought to be attributed to the base persuasion of the said couple? Nor was it difficult to persuade that girl to do what she was prone to by inborn instinct and by the example of her mother.¹⁰⁶

It is not my duty to divine why that couple so anxiously desired the return of Francesca to their home. But I can not persuade myself that they were moved by mere charity, namely, that she might escape ill-treatment. For Francesca, in the said letter, acknowledges that she is leading a quiet life and that her husband and the servants are treating her very well, and that what she had laid before the Bishop had been the falsehood of the said couple.

I know furthermore that if a husband have knowledge of the adultery of his wife and keep her in his home, he can not escape the mark and penalty of a pimp. [Citations.] If therefore, as the said couple declare, Francesca was not their daughter, why did they receive her so tenderly into their home after her adultery was plainly manifest? Why did they, as I may say, cherish her in their breasts, not merely up till the birth of her child, but even till death? And I wish I could

say that her love affairs with the banished [priest] were not continued there! ²⁰³ For at his mere name,²²¹ after the knocking at the door, as soon as they heard that some one was about to give them a letter from the one in banishment, [xxi] immediately the door was opened and Guido was given an entry for recovering his honor. If indeed the said couple had been displeased with the adultery of Francesca, they would, without doubt, have shuddered at the name of the adulterer, and would have cut off every way for mutual correspondence. Therefore it is most clearly evident that the cause of wounded honor in the Accused had continued, and indeed new causes of the same kind had arisen, all of which tended toward blackening his reputation.

Nor does it make any difference that the Accused may have had in mind several causes of hatred toward both Francesca and the Comparini. For if these are well weighed, they all coincide with and are reduced to the original cause, namely, that of wounded honor. However that may be, when causes are compatible with one another, the act that follows should always be attributed to the stronger and more urgent and more acute. [Citations.] And on the point that when several causes concur, murder is to be referred and attributed to injured honor, and not to the others. [Citations.]

Therefore I think that any wise man ought to acknowledge that Guido had most just cause for killing the said couple, and that very just anger had been excited against them. This was increased day by day by the perfectly human consideration that he would not have married her unless he had been deceived by that very tricky couple. And to what is said above we may add that either the child born [of Pompilia] was conceived in adultery, as the Accused could well believe, since he was ignorant of the fact that his wife was pregnant during her flight; and then we can not deny that new offense was given to his honor, or the old one was renewed, by the said birth; or the child was born of his legitimate father; and who will deny that by the hiding of the child,²⁰⁹ Guido ought to be angered anew over the loss of his son? And the great indignation conceived from either cause (the force of which is very powerful) is so deserving of excuse that very many atrocious crimes committed upon the impulse of just anger have gone entirely unpunished. [Citations.] The following text [Citation] agrees with this, " Nevertheless, because night and just anger ameliorate his deed, he can be sent into exile." [Citations.]

[xxii] And not infrequently ²⁰¹ in the contingency of such a deed, men have escaped entirely unpunished, who, when moved by just anger, have laid hands even upon the innocent. For a certain Smyrnean woman had killed her husband and her son conceived of him, because her husband had slain her own son by her first marriage. When she was accused before Dolabella, as Proconsul, he was unwilling either to

liberate one who was stained with two murders, or to condemn her, as she had been moved by just anger. He therefore sent her to the Areopagus, that assembly of very wise judges. There, when the cause had been made known, response was given that she and her accuser should come back after a hundred years. And so the defendant in a double murder, although she had also killed one who was innocent, escaped entirely unpunished. [Citation.]

Likewise⁴⁹² a wife who had given command for the murder of her husband because of just anger from his denial of her matrimonial dues was punished with a fine, and a temporary residence in a monastery, as Cyriacus testifies. [Citation.] Such pleas might indeed hold good whenever the accused had confessed the crime, or had been lawfully convicted, neither of which can be affirmed [in our case]. But much more are they to be admitted, since he confesses⁴⁹³ only that he gave order for striking his wife's face, or for mutilating it; and if those he commanded exceeded his order, he should not be held responsible for their excess. [Citations.]

His fellows and companions give his name and claim that he had a hand in the murders. And in spite of the fact that the Fisc claims they have hidden the truth in many respects, equity will not allow that certain matters be separated from their depositions and that these be accepted only in part; for if they are false in one matter, such are they to be considered in all. It would be more than enough to take away from those depositions all credence that, under torture in his presence, they did not purge that stain. [Citations.]

[xxiii] It has very justly been permitted that in defense of this noble man I should deduce these matters, as they say, with galloping pen. The scantiness of the time has not suffered me to bring together other grounds for my case; these could be gathered with little labor, and possibly not without utility. Yet I believe that all objections, which can be raised on the part of the Fisc, have been abundantly satisfied.

H. ARCANGELI, *Procurator of the Poor.*

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case.

*On behalf of Count Guido Franceschini, Prisoner,
against the Fisc.*

Memorial of fact and law.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Romana Homicidiorum.

[Pamphlet 2.]

Most Illustrious and Most Reverend Lord Governor:

From the "prosecution [for flight]," which was brought in this very tribunal,²⁷⁰ and by his honor, Lord Venturini, Judge in this present case, there is more than satisfactory proof of adultery committed by Francesca Pompilia, wife of Count Guido Franceschini, a nobleman of Arezzo, with the Canon Caponsacchi. With Caponsacchi the parents of this same Francesca Pompilia entered into conspiracy, although they were living here in the City. And after she had given an opiate¹⁹⁸ to Count Guido and his entire household, she fled that same night from the city of Arezzo toward Rome.

Consequently, the Canon, as may be remembered, was banished to Civita Vecchia, with a statement of his criminal knowledge of that woman in the said decree of condemnation.²⁷¹ This adultery is also evident from other matters of evidence deduced by the Procurator of the Poor. There remains, accordingly, no room to doubt it, but rather their adultery may be said to be notorious, here in the City, in the country of Count Guido, and throughout all Etruria.

Since this is established, we can safely assert that even if Guido had confessed that he slew his wife with the complicity and help of Blasio Agostinelli of the town of Popolo, Domenico Gambassini of Florence, Francesco Pasquini of the castle of Monte Acuto, and Alessandro Baldeschi of Tiferno, he should not therefore be punished with the ordinary death penalty, but more mildly. This is in accord with the decision of Emperor Pius as related by Ulpian [Citation] and by Martian. [Citation.] For in both of them it is said that a man of low birth is sent into perpetual exile, but that a noble is banished only for a limited time; but the crime of a husband who is moved by just anger is overlooked, as this same Ulpian confirms. [Citation.] Since it is most difficult to restrain such anger. [Citation.]

[xxvi] Yet we should not consider it necessary that the adultery of the wife be conclusively proved (as it really is) in order that there be room for mitigating the said penalty. For it would be enough, if we were dealing with a case of mere suspicion: *Glossa*, etc. "A man who had killed his son because he believed the young man had lain with his stepmother, as was true, was deported to an island." [Citations.]

Dondeus also speaks of a man who had boasted that he wished to ruin the sister of the one who killed him, which is said to have aroused just suspicion and fear for the loss of honor sufficient to free the slayer from the ordinary penalty of murder. [Citations.]

Nor is it true, as some authorities affirm, that the husband must take the wife in very adultery, and kill her immediately;⁴⁰⁵ in which case they say the abovesaid laws hold good, but that it is otherwise if the murder is done after an interval. [Citations.] [xxvii] For the contrary opinion is the truer, the more usual, and the one to be observed in practice, as Marsilius well advises, where he speaks in defense of a certain nobleman who had killed another person after an interval. The man slain had betrothed his sister by promise and had kept her for three months, and had then rejected her. Because of this, a great injury and much infamy were inflicted upon his family and the entire kin. Marsilius then adduces the abovesaid laws, which pronounce concerning a husband who kills his adulterous wife; and Bertazzolus offers the case of one who had killed his adulterous wife and had afterward, in his own defense, proved the adultery by the double confession of the same wife. Claudius Jr. testifies that the murderer was banished for a time by the prætor of Mirandola, and after the lapse of several months he was recalled by the Duke of Mirandola. [Citations.]

Afficti cites the decree of the kingdom, beginning *Si Maritus*, which concedes impunity to a husband who kills his wife and the adulterer both, in the very act of adultery and without any delay. He then says that if both of these requisites are not present, the husband is excused in part, but not entirely; and so is punished more mildly. And in No. 2 he gives the reason; because whenever one commits a crime, under impulse of just anger, the penalty should be somewhat moderated, according to the aforesaid text. [Citations.]

Matthæus [Citation] adduces the excellent words of Theodoric³⁸⁴ as quoted by Cassiodorus [Citation], where we read: "For who can bear to drag into court a man who has attempted to violate his matrimonial [xxviii] rights? It is deep-seated even in beasts that they should defend their mating even with deadly conflict, since what is condemned by natural law is hateful to all living creatures. We see bulls defending their cows by strife of horns, rams fighting with their heads for their wethers, horses vindicating by kicks and bites their females; so even these, who are moved by no sense of shame, lay down their lives for their mates. How then may a man endure to leave adultery unavenged, which is known to have been committed to his eternal disgrace? And so if you have made very little false statements in the petition you offer, and if you have indeed only washed away the stain to your marriage-bed by the blood of the adulterer, taken in the act, and if you are looking back from your exile, which was evidently inflicted not by reason of a bloodthirsty mind, but because of your sense of shame, we bid you return from your exile; since for a husband to use the sword for the love of his sense of honor is not to overthrow the laws, but to establish them."⁴⁰²

Dondeus says this interpretation is clearly proved by the authority of a glossa in the chapter: *Ex litterarum.* [Citation.] For in the text, when these words are used: "your wife taken in adultery," a glossa explains the word "taken" as equal to "convicted." Marta says this opinion is much more just and equitable, and is commonly held. And Muta in the end offers a decision of the supreme court of the kingdom, by which a husband was condemned to the galleys for seven years.³⁰⁵ This was on account of the accompanying circumstances; for he had had his wife summoned outside of the city walls by his son, and there had killed her; and afterward her body was found to have been devoured by dogs. Dexartus testifies that it was thus decided in Sacred Royal Court, in condemning a husband only to exile. Sanfelicius also tells us that certain noble young men,³⁰⁷ who had killed their wives after an interval because of strong suspicion of adultery, were absolved by the Royal Council of Naples, in view of the quality of the persons concerned. In their favor, authorities of the highest rank had written, whose allegations this same author places under the said decision. And although some of these young men were condemned to the oars, he said that [xxix] this punishment had been imposed because³⁰⁹ of the mutilation of the privates which followed; because those who do such things are considered enemies to nature. And Calderini, although in the preceding numbers he inclined toward an opinion contrary to ours, came over to our side when he saw that Matthæus held that opinion.

And the reason is very evident; for whenever such an injury is suffered by fine natures, especially among the noble class, it is ever present with them, and continually oppresses the heart, and urges it on to vengeance for the recovery of lost honor, as Giurba well notes. [Citations.]

For this reason, it has always and everywhere been held in case of murder committed for honor's sake that there is no place for the ordinary death penalty, which should be mitigated at the discretion of the judge. And this rule has been followed, when the murder was committed after an interval, and even after a long interval. For the above-said reason, both Grammaticus and Gizzarellus affirm and hand down this opinion. The latter says that it has always been so adjudged by the Sacred Council of Naples, and that this opinion has always been accepted by our ancestors. [Citations.]

It was so judged by the high court of the Vicar, although it was dealing with a murder committed after two years, and by craft, by two brothers upon the adulteress in the presence of her sister's cousin. Cyriacus also speaks of the murder of a husband by his wife, because he was keeping a mistress and was contriving against her honor; and there he said that since just anger has a long continuance, because of its extreme bitterness, vengeance should always be said to follow immediately. [Citation.]

Another reason also is at hand, which is considered by the authorities, namely, that an injury, whereby the honor is hurt, is not personal, but real, and therefore can be resented at any time whatsoever, even [xxx] after the lapse of a very long time, as Giurba holds in our circumstances. [Citations.]

We have therefore a great many standard authorities who affirm, for most vital reasons, that murder committed, even after an interval, upon the person of the wife or of any one else, for honor's sake, ought not to be punished with the ordinary death penalty, but more mildly. Furthermore, these authorities bear witness that the matter has been so judged in the tribunals with which they are acquainted. No attention therefore should be paid to the opposite opinion held by Farinaccius [Citation]; for we plainly see that he speaks contrary to the common and usually accepted opinion in tribunals. [Citation.]

Still further it should be noted that the same author in *cons. 66 num. 5*, holds the very opposite, basing his opinion especially upon a text in the law of Emperor Hadrian [Citation], where a father had killed his son, who was not found in the act with his stepmother, but while out hunting and in the woods, that is, after an interval. And he was punished not with the death penalty, but by deportation. Several of the above-cited authorities offer the decision of this text likewise in corroboration of this opinion of ours. Our point is also proved by the fact that this same author in *quaest. 121* is rather doubtful; and there he acknowledges that for this opinion of ours the reason given above is very strong, namely, that "injured honor" and "just anger" always oppress the heart. And so he says in such a case one should note the sense of the text in the law *Non puto* [Citation], where Modestinus, Doctor of Law, says that he thinks that one would not make a mistake who in doubtful cases should readily give this response against the Fisc; and Farinaccius cites him so speaking.

But one should be on his guard against what this same Farinaccius asserts: namely, that this opinion of his, so far as he could see, was the one more approved by the Sacred Court. For since this point of doubt, as he himself confesses, had not then been advanced, he could not judge what would be the outcome if it had been proposed. And indeed the wisest of the said high authorities do not give their assent [xxxii] to his opinion, but rather hold the contrary, which is favorable to ourselves, as is seen in the decisions they have given from time to time. For it was so held on March 25, 1672, in the case of Carolo Falerno, who was condemned to an unusual penalty for the murder of Francesco Domenici; for he had found him coming out of a church, to which he had warned him not to go, as he was suspicious that the one slain was following his wife. In like manner with Carolo Matarazzi, August 15, 1673, who killed his wife on the foolish grounds that he suspected

her of illegitimate conception because of the absence of her menses; but this suspicion did not indeed correspond with the truth. And in law a matter may be even more mistaken and less observed by human intellect. [Citations.]

Likewise in a murder committed treacherously with an arquebus upon the person of Tomaso Bovini by Francesco Mattucio of Monte San Giovanni, a person of the very lowest class, merely because of the attempted dishonor of his sister. The attempt of the one killed was proved by two witnesses on hearsay of the one slain. On September 4, 1692, the penalty of life sentence to the galleys, to which the said Mattucio had been convicted on strongest proofs on the preceding July 12, was moderated by the sacred court, before the Right Reverend Father Ratta, of blessed memory. With good right, therefore, this same Farinacius is expressly confuted and overthrown by Matthæus. [Citations.]

This opinion of ours is to be accepted the more readily when we consider that the husband is more stirred by the adultery of his wife than by the murder of his son. [Citations.] Yes, and even more than by the defilement of his daughter. [Citation.] So that if a husband⁴⁸⁴ does not complain of the adultery of his wife, he is considered a pimp, as Paschal holds, where we read [xxxii] recently: "Adultery of the wife gives offense not merely to the husband, but blackens and stains the entire kin." [Citations.] That⁴⁸⁵ this happened in the present case is plainly evident; for Abate Paolo, brother of Guido, was compelled not only to leave the city,⁴⁸⁴ in which he had lived for many years with highest praise, but even to pass out of Italy, because he was pursued undoubtedly by the greatest disgrace on account of this adultery. While⁴⁸⁵ he was carrying on Guido's cause in the courts, he moved the laughter and sneers of almost all sensible and wise men, not to say of the very judges themselves, as usually happens in these circumstances. [Citations.]

Nor would it stand in the way of what we have said above if, without prejudice to the truth, we should admit (as the Fisc claims) that Count Guido killed his wife with the complicity⁴⁸⁹ and aid of the said Blasio, Domenico, Francesco, and Alessandro, assembled for that purpose; for he could do that in order⁵⁰⁵ to take vengeance upon her more easily and more safely. [Citations.]

[xxxiii] [Nor would it stand in our way if we admitted] that he had assembled the said men by means of money.⁵¹⁰ [Citations.]

Nor does this plea of injured honor cease with regard to the murders of the said father-in-law and mother-in-law;⁵⁰¹ for since their conspiracy in the adultery of their daughter is established, they themselves were among the causes of the injury and ignominy which resulted therefrom to the prejudice of the honor and reputation of Count Guido, their

son-in-law and her husband respectively. Therefore, these murders likewise ought to be punished with the same penalty as the principal, according to texts in the law *Qui domum*. [Citations.] And so they gave cause enough to Count Guido to take vengeance on them.

It is to be added, furthermore (as will be proved indeed, and as Count Guido himself has asserted in his testimony), that they themselves did another injury to his reputation by means of the civil suit which they brought on the grounds of the pretended birth of Francesca Pompilia; and not merely here in the City, but also in his own country, they distributed the most bitter libels,¹⁰⁹ which were added to this same lawsuit. Hence it can not be denied that Count Guido for this reason had conceived a just anger and provocation and that he had just cause for taking vengeance. This is according to the text [Citation], where Alexander the Third wrote to the Bishop of Tornacensis that a certain woman, who had killed her child, should be placed in a monastery, because she was reproached by her husband with the accusation that it had been conceived in adultery. For in crimes where anger does not entirely excuse, still the delinquent who kills in anger conceived from just grievance is somewhat excused. [Citation.]

And this is true in spite of the fact that the Fisc may claim that the penalty given in the Constitution of Alexander has been incurred. For in the [xxxiv] present case the crime can not be said to have been committed on account of hatred aroused by the lawsuit;¹²¹ for in that suit Count Guido had gained a favorable sentence¹²³ from A. C. Tommati,¹²² which was sanctioned by the Supreme Tribunal of Justice. But the crime was committed indeed because of his just indignation. And this arose, first, from the ignominy growing out of the said pretense as to her birth; second, from the provocation given by the Comparini (now slain) in issuing and distributing the said papers;¹⁰⁹ and, third, from their conspiracy in the flight of his wife. For indeed this Constitution of Alexander does not apply where no guile is present and where some provocation has been given by the one hurt. Farinaccius very fully affirms this throughout *cons. 67*, where in the end he places the complete decision of the Sacred Court.

In any case, since with Count Guido two causes for committing crime concurred: one the aforesaid matter of the lawsuit, another wounded honor because of the lawsuit brought and the flight in which they conspired, wherefrom the adultery had followed, the cause of honor should be given attention, as it is the graver and consequently the more proportionate to the crime. [Citations.]

Likewise the penalty should not be increased in view of the place of the crime, because the defense of one's honor is so justifiable, and the anger and commotion of mind arising therefrom is so just, that reason for it can not be demanded, as Merlin Pignatelli [Citation] holds,

because of Giovanni Francisco de Carrillo [Citation] who speaks of an insult offered in prison. And No. 29 approves the decision because ⁵⁰³ that greater reverence is due to churches and other places consecrated to God, and in which the King of Kings and Lord of Lords dwells in essence; and yet one who commits crime in them from just anger and grievance is excused; for he asserts that all Canonists and other authorities there alleged by him unanimously acknowledge this.

More readily, therefore, should this conclusion follow in our case, since the said Francesca was not staying in a formal prison, but was merely keeping her home as a prison, under security of 300 scudi, that she would not depart therefrom; because one who has given bond and has sworn not to leave a place is neither in chains nor in custody. [Citations.]

[xxxv] Lucan holds that there are differences between being kept in chains and being committed under bond, etc. And Farinaccius holds that the word "custody" should be more strictly interpreted than the word "chains." [Citations.]

Even if, therefore, Count Guido had confessed that he killed his own wife, his father-in-law, and his mother-in-law, with the complicity and aid of the above-named helpers, he should not be punished with the ordinary penalty, for reasons given above. And much more readily should we follow this opinion since we can see that he confessed ⁴⁹⁸ only that he gave commands for mutilating his said wife (*ad sfrisandum*), if I may use the word of the authorities. In this case he is not to be held responsible for the subsequent death of his wife and of the others. Decian, *cons. 622, no. 4*, in this very condition, holds that one giving orders can be punished only for the manner of committing the crime, for which bodily punishment can not be inflicted.

Thus far the Fisc has been unwilling to rest satisfied with such a qualified confession. Yet since he claims the right to torture the accused for proving some further pretended truth, the torture shall be simple; nor can the torment of the vigil ⁵²⁰ be inflicted; because the Constitution given out by Pope Paul Fifth, of sacred memory, for the reformation of the courts of the City, stands in the way of that. This is included among his Constitutions as the 71st. By this it was decreed that such torment could not be inflicted unless these two features jointly concur: namely, that the crime be very atrocious and that the accused be burdened with the strongest proofs. [Citations.]

[xxxvi] But a crime is said to be "very atrocious" provided it is one for which a penalty more severe than mere death should be inflicted, such as useless mutilation, burning, and the like. *Farinaccius* ⁸⁸⁶ *qu. 18, num. 68*, etc. And such a death, as ignominious and infamous, has no place with the persons of nobles. [Citations.]

Hence it is much less so here, because we are not arguing about the death penalty even, which does not enter into the present case for reasons given above. And Gabriellus speaks to this effect on the point that such a crime may not be said to be qualified.

What has been said in favor of Guido, the principal, also stands in favor of the aforesaid Blasio, Domenico, Francesco, and Alessandro; because they can not be punished with the ordinary penalty, but only with the same penalty as the principal. [Citation.] Baldo cites a case under the statute which shows that one under bann for a certain crime can not be killed save by the enemy who had him put under bann; and he says that if the enemy has him assassinated, the assassin is not punished. And he gives this reason, that what is permissible in the person of the one giving the order should be held as permissible in the one to whom orders are given; and he says it had been so held in a case under that law. Castro [Citation] holds that when one is permitted under the statute to take vengeance upon a person who has given him offense, he is also permitted to assemble his friends, to afford him aid, and that they shall go unpunished, just as the principal does. He also asserts that Jacobus Butrigarus³⁹⁸ [Citation] held thus, in *cons. 277*, where he speaks of the case of a husband who had assembled men to beat one who had wished to shame the modesty of his wife; he ordered his wife to pretend to give ear, and when the intriguere had come [xxxvii] murder was committed. And he says that men brought together in this way should be spared, because such an assembly was permissible for the husband, who was principal. [Citation.] Jason holds that in any vengeance permitted by law, one can not demand it of another; yet he to whom it is permitted may take fellows and accomplices with him for the same act, and if they kill in company with him they shall not be held to account for the murder nor for the aid they have given; and he says that this opinion³⁹⁹ should be much kept in mind. Cæpollinus also illustrates this in several cases, especially in that of certain men who had killed one keeping the company of the sister of the man who had assembled them; and he says that they should not be punished, just as the principal was not, and he gained his point so that it was thus adjudged. [Citations.]

Soccini also holds it should be thus adjudged, unless one wishes to say that they should be punished with a slighter penalty than the principal, as often happens in the case of auxiliaries. And he speaks in our very circumstances of men assembled by a husband for the sake of killing one who had polluted his wife. In these same circumstances, see also Parisius. [Citation.] Carera [Citation] speaks of a father who had his daughter (who had been keeping bad company) killed by an assassin; and he says that neither the father nor the murderer are to be held to account. [Citation.]

Marsilius also, after placing in the very beginning this principle, that when one matter is conceded all seem to be conceded which lead thereto, draws inference therefrom for the present case and many reasons for it are adduced. Cassanis also [Citation] holds that men assembled in this way are not held responsible either for the murder or for the aid furnished, if they do the killing in the company of the principal. And in these same circumstances Garzoni speaks, decision 71, throughout.

Nor does it stand in the way of our reasoning that one of the aforesaid defendants had inflicted wounds with his own hands, or had killed one of the victims; as Francesco has confessed that he inflicted four or five wounds [xxxviii] in the back of Francesca Pompilia. Even in these circumstances the rule holds good that auxiliaries shall not be punished with greater penalty than the principal. And so affirm individually the following authorities among those recently cited. [Citations.]

And Garzoni testifies that it was so adjudged in the said decision 71, where we read: "Or he may have with himself associates for this act," and if they kill the adulterers in company of the principal they are held to very slight account, either for the murder or for the aid given, and it was so adjudged.

And even in the more extreme case of one killing by assassination, and consequently in the absence of the principal, this is the opinion of Baldo [Citation], where we read: "And now it is inquired whether an assassin is ever punished, and I say he is not; because what is permitted in the person giving command is also permitted in the person commanded." Castro [Citation] also says: "Because what I can do of myself I can have done through my helpers who are necessary for that purpose." And Afflitti [Citation] says: "Either with one's own hands, or by help of another, even with the influence of money, and thus by an assassin; for Baldo says on this same point: 'What is permitted in the person giving command is also permitted in the person commanded'; and he witnesses that it was so adjudged." [Citations.] Marta [speaks as follows]: "Much more so because authorities affirm that a husband, who on account of fear can not kill the adulteress, may even by the help of money demand of another that he kill her, and neither of them is then to be punished."

But whatever Caballus [Citation] may say to the contrary, he bases his opinion upon Castro and Rollandus. Castro, however, favors our opinion, as is to be seen in No. 3. Rollandus should not be given heed; for when he offers this very same opinion about the statute which permits anyone to take vengeance, and says that since this kind [xxxix] of permission is personal it can not be passed on from one to another, this opinion of his is expressly contrary to the teaching of Baldo, Cas-trensis, Jason, and others, whom we have alleged above in paragraph

quae dicta sunt. And since this opinion of ours is milder and more equitable, it should hold good, as Jason decides on this point. [Citation.]

Nor can the punishment be increased because of the alleged carrying of prohibited arms;⁴¹⁸ because the latter offense is included then with the real crime. [Citations.] In Guazzin we read that this is so, even if for the carrying of the arms a greater penalty would be inflicted [than for the principal offense]. And so, whenever it is evident that the crime has been committed for honor's sake and for a just grievance, as in the present case, the carrying of the arms may go unpunished, or at least it should not be punished with a more severe penalty than should be imposed for the principal crime itself. Thus Policardus [Citation] well affirms when speaking of arms which are considered treacherous by the Banns.

These claims should hold good more readily as regards Domenico and Francesco, who are foreigners, and are therefore not included in any of the Apostolic Constitutions or Banns, which prohibit the bearing of arms under very heavy penalties. [Citations.]

Especially since they are minors as is made clear in the course of the trial, pp. 35 and 304; in which case they are likewise not bound by these Constitutions and Banns, which give judgment upon the crime of a minor. For the power to make and establish such regulations was lacking in the Prince or public official concerned. [Citations.]

Such are the matters which, in view of the excessive scantiness of time, I have been able to collect in discharge of my duty for the defense of these poor prisoners. Nor do I at all distrust that my Lords Judges, when they see that too little has been said, will wish to supply and offer what is lacking out of the high rectitude for which they are distinguished. For this would be quite in accord with the decree of Emperors Diocletian and Maximian, as related. [Citation.] [xl] And they will follow the advice of Hippolitus Marsilius, famous in criminal proceedings, who says that a judge is obliged by his office to seek out grounds of defense for the accused. [Citations.]

DESIDERIO SPRETI,
Advocate for the Poor.

[File-title of Pamphlet 2.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case.

*On behalf of Count Guido Franceschini
and his Associates, Prisoners,
against the Court and the Fisc.*

*Memorial of law by the Honorable Advocate
of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Romana Homicidiorum.

[Pamphlet 3.]

Most Illustrious and Most Reverend Lord:

The plea of injured honor which redeems Count Guido from the rigorous penalty that should follow for the commission of murders likewise urges mitigation of the ordinary penalty for Blasius and the associates who had hand in the murder, even though it may be pretended that they were paid thereto.⁵¹⁶ For it is taken for granted that we are dealing with a case far removed from assassination, because of the presence of a person who had real cause for vengeance, as the following authorities think in common. [Citation.]

There has been the strongest controversy among authorities as to whether a father or husband may demand of any one except his son the murder of his daughter or of his adulterous wife. And divided on the two sides of the question, they have contended strongly. [Citation.] Yet the majority are in favor of the affirmative and of the milder sentence; and often, in the event of such a murder, it has evidently been so adjudged. [Citations.]

But since this question lies outside of our line of argument, it would be vain and quite useless labor to take it up, nor is time to be wasted when we are so hard pressed for it. For we are evidently dealing with auxiliaries, assembled for committing homicide, according to the thought of the Fisc. Hence the conditions of a mere "mandatory" are not applicable; because of the immediate presence of the principal in the crime; for when he also lays hand to the crime, those who do likewise are not called mandatories,⁵¹⁷ but auxiliaries and helpers. [Citations.]

Furthermore, just as Guido himself is freed from the death penalty because of the said plea of injured honor, so likewise are his allies and auxiliaries freed, as the following authorities [xlii] unanimously assert. [Citations.]

Those who are cited in support of the opposite view do not pronounce opinion in our peculiar circumstances, but speak of a husband demanding of another the murder of his adulterous wife, and not of auxiliaries who do the killing in company with the husband, as in our case. [Citations.]

In such contingency, auxiliaries who give aid to a husband while killing his adulterous wife have always enjoyed the same indulgence as the principal himself; that is, they always escape the capital penalty, and indeed go entirely unpunished. [Citations.]

Nor does the distinction of Caballus make any difference, where he holds that auxiliaries may indeed assist with impunity a husband or a father killing a wife or daughter respectively, in order that these may kill the more safely; but that they can not lend a hand and actually

kill; [xlivi] for in the latter case they are to be held accountable for the murder. Because, for foundation in making such a distinction, he plants his feet upon Paolo de Castro. [Citation.] But this is so far from proving his purpose that it rather turns back on him remarkably to his own injury. For after the latter sets before himself this kind of a difficulty, under No. 2, he adds: "But I hold entirely the contrary: that neither the one who did the killing nor he who made the assembly (as it may be called) are to be held for the murder for the purpose of inflicting the capital penalty."

This is also true in the council of Rollandus a Valle. [Citations.] May that learned authority pardon me;⁴⁹⁷ for even if he may attempt to confute Paolo de Castro in the said 154th council, which is in our favor, under the pretext that he speaks contrary to the common opinion, this claim does not suffice in view of the above-cited authorities. And if there were time, I would demonstrate this more clearly.

Furthermore Rollandus alleges Parisius, *cons. 154. lib. 4.* But he could well omit that, because No. 22 proves expressly contrary to him on its very face, where it says: "Under our very conditions was given that excellent decision of Paolo de Castro in the before-cited council. In stronger circumstances (which also include the present case) he concludes that those who knew of, or were present, or were associated with a husband in the act of the said murder, and who furnished him aid, ought not to be punished with a greater penalty than the principal, according to the rule concerning auxiliaries, beside the accurate authority of Marsilius." And he concludes that at the very worst, when the utmost rigor of it is considered, they should not be punished with more than a temporary banishment.

Furthermore, Rollandus in the said council is expressly confuted by Facchinus. [Citation.] Nor is this without vital reason. For just as a qualification that modifies a crime in the principal delinquent increases it also for the auxiliaries, whenever they are aware of it, so all sense of equity demands that a qualification that diminishes the penalty for the principal, even though it be unknown to the auxiliaries, shall act in favor of them also. [Citations.] Hence Caballus remains without a stable foundation, and is opposed to the opinion of the many doctors here alleged, who make no distinction between those who simply assist and those taking a hand in the murder; and indeed all of them [xliv] speak of auxiliaries. Furthermore, it is found that this has often been the judgment, even in the more extreme circumstances of one commanded to a murder, as was said above. And so strong is the plea of ⁵¹¹ injured honor that not only does it extend its protection to mere mandatories, but even to mandatories whose case is modified by the circumstance of assassination. And it causes them to be absolved, as we find that it was so decided. [Citations.]

Hence if both mandatories and assassins are redeemed from the ordinary death penalty, whenever they kill an adulteress at the command of the husband, it necessarily follows that the distinction of Caballus is not a true one, nor is it accepted in practice. For if they are mandatories, we can not deny that they may kill with their own hands; and nevertheless, not to speak of the other decisions cited above, Clar. [Citation] testifies such a decision favorable to the accused was handed down, contrary to the opinion of Caballus.

If, therefore, Blasius and his fellows are not to be punished with the death penalty for affording aid in the murders, vain is the question whether they can be subjected to the torment of the vigil⁵²⁶ for the purpose of having the very truth from their own mouths. For this procedure demands two requisites: one that the most urgent proofs stand against the accused, and the other that the crime be very atrocious, according to the prescript of the Bull. [Citations.]

And although the powers of this Tribunal are very great for the dispensing with one of the said requisites, yet I have never seen the said torment of the vigil inflicted unless when there was no doubt that the crime, for which the Fisc was trying to draw confession from the accused, deserved the capital penalty. We can not believe that the prosecution expects to make a case to this end because of the pretended conventicle;⁴⁰⁰ since those who are assembled are not to be held under the penalty for conventicle, but only the one who assembled them is so held, as Baldo well asserts. [Citations.] Nor in this case can the penalty for the asserted conventicle be made good [xlv] against Count Guido himself, since the cause for which he assembled the men aids him in evading the penalty; inasmuch as one may assemble his friends and associates for the purpose of regaining his reputation. [Citations.]

For this has been well proved, that whenever any one for just grievance assembles men to avenge his injury, he has not incurred the crime and penalty of conventicle.

And although Farinacci, *quaest. 113, n. 55*, declares that this holds good provided the vengeance be immediate, but that it is otherwise if the vengeance be after an interval, yet I pray that it be noted that in either case, if it concerns vengeance for a personal injury (in which conditions he himself speaks), and therefore when for an injury which wounds the honor, such vengeance is at all times said to be taken immediately. For such an injury always urges and presses, because it should be termed the restoration and reparation of honor (which the one injured in his reputation could not otherwise accomplish), rather than vindication and vengeance, as we believe was satisfactorily proved in our other plea in behalf of Count Guido.

But all further difficulty ceases with this consideration: prosecution can be brought for conventicle, if the men were assembled for an evil

end and no other crime followed therefrom; but when, according to the sense of the Fisc, they have been called together for committing murders, and these are really committed, no further action can be taken as regards the prohibited conventicle, but rather for the murderers themselves; for the assembling of the men tended to this same effect. [Citations.] And it is for this reason more particularly: because when the beginning and the end of an act are alike illegal, the end is given attention, and not the beginning, as Bartolo teaches us. [Citations.]

It is to be added still further, that the assembling of men is not illegal in itself; [xlvi] indeed it is possible for it at some times to be both permissible and worthy of approval, as in the cases related by Farinacci. But it is illegal because of its evil consequences and the base end for which it is usually made. Hence, as the assembling of men is prohibited, not in itself, but because of something else, the end ought to be considered rather than what precedes the end.

Nor should the rigorous penalty of death be inflicted at all upon Domenico Gambassini and Francesco Pasquini for the pretended carrying of arms⁴¹³ of illegitimate measure; because they are foreigners and had not stayed long enough in the Ecclesiastical State so that their knowledge of this law could be taken for granted. Nor ought it to be inflicted upon the others; for even if the death penalty is threatened by the Constitutions and Banns for the bearing or retention of them; yet since the carrying of this kind of arms is not prohibited for reasons in itself, but because of the pernicious end which follows it, or can follow it; and because this bearing of arms was looking toward the said murders; and because these, although they are not entirely permissible, are not utterly without excuse, the crime of carrying such arms should be included with the end for which they were carried; because the one is implied in the other, nor may the means seem worse than the end. And although, according to the opinion of some persons, the penalty for carrying arms is not to be confused with the crime committed with them, whenever the latter is the graver, yet this seems to be so understood when a crime is committed with them which is entirely illegal and without excuse. But this is not so when the crime is decreased and extenuated, and indeed excused in part, because of the reason for which it was committed.

In any case, the bearing of arms, according to common law, is but a slight crime. [Citations.]

Although by special Constitutions and Banns the penalty has been increased almost to the highest possible point, yet this kind of increase does not change the nature of the crime. And just as in the eyes of the common law [xlvii] torture is not inflicted for getting the truth from those indicted for the said carrying of arms, in view of the insignificance

of the crime, in like manner it can not be inflicted by the force of Constitutions and Statutes which have increased the penalty. [Citations.]

And this is especially true in the case of the torment of the vigil, which can not be inflicted for a crime that is not in its very nature most atrocious, but that is held as such, so far as the penalty is concerned, merely by the strength of a decree. This holds good unless indeed the nature of that crime is changed according to the method of proceeding in it. [Citation.]

And we see in the Bans of our Illustrious Lord Governor that he expressly declared this, when he wished to proceed with the torment of the vigil in cases, in which he could not proceed legally; that of a certainty he would not do so. Nor would he indeed have done this, if he could have inflicted such tortures in the case of crimes which are not capital by common law, but are to be expiated with the death penalty by the rigor of the Bans.

H. ARCANGELI,
Procurator of the Poor.

[xlviii] [File-title of Pamphlet 3.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case.

*In behalf of Blasio Agostinelli and his Associates,
Prisoners, against the Fisc.*

Memorial of fact and law.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

SUMMARY.

[Pamphlet 4.]

JUNE 24, 1694.

No. 1.¹¹⁰

The sworn testimony of a witness as to the poverty of said Count Guido Franceschini and the miseries suffered by the Signori Comparini while they stayed in his home in the city of Arezzo.

Angelica, the daughter of the deceased Pietro and Giovanna Battista of Castelluccio, in the Diocese of Arezzo, about 35 years of age, was examined by me on behalf of Pietro Comparini, against any one whomsoever, and put on permanent record; as to which testimony, she took oath to speak the truth, as is seen below.

I tell you in all truth, sir, that while I was staying in Arezzo last January ⁶⁸ in the home of Signora Maddalena Baldi ⁵³ Albergotti, the chance was offered me to go and serve Signora Beatrice Franceschini and her sons, etc. I decided to do so, and when I had gone to the home of the Signori Franceschini I spoke with the said Signora Beatrice. She drew me aside into a little room and told me that she would take me as a servant, but that I should never have any private dealings with the two old people who were in the house; one of them was Signor Pietro Comparini, and the other Signora Violante, his wife. She charged me still further that if either of the two old people chanced to call me into their chamber, I should not go without first asking her permission. On these terms I accepted the service. After I had entered thereupon, I noticed that Signora Violante stayed in her room most of the time, weeping, and though the Comparini were stiff with cold, the room was without fire. Hence I took pity on her, and without the knowledge of Signora Beatrice, I took the coals from my own brazier and carried them to her. But no sooner did I offer them to her than Signora Violante ordered me out of the room, lest Signora Beatrice might take offense that I had done this act of charity. Also, once among the many times, when Signora Beatrice found it out she made me leave the coals in the fireplace and snatched the shovel from my hands, and threatened me, saying that if she had wished it she herself would have come to bring it; because she did not want me to do any service whatsoever for the said Signori Comparini. And the Comparini could not even speak among themselves, because Signor Guido Franceschini, the Canon Girolamo his brother, and Signora Beatrice, their mother, would stand at one door or another of the apartment and listen to what the said Signori Comparini were saying to one another. This occurred every evening and morning until the said Signor Pietro left the room and the house. And when he returned at

night they were unwilling for me to make a light for him on the stairway. And once when Signor Pietro came back home about half past six in the evening, and I heard him scrape his feet, I took up the lamp to go and meet him. But Signor Guido noticing that, snatched the lamp from my hands, [1] telling me that I had better keep still and that I had better not approach unless I wished to be pitched out of the window. And this seemed all the worse to me, because when I first entered upon the service of the said Franceschini I had heard it said around the house that one evening, as Signor Pietro was coming back home, he had fallen, while ascending the same steps without a light, and that he had made a very ugly bruise, because of which he had had to keep his bed for many days. At the same time, while I was in the said service, it chanced one morning at breakfast that the Franceschini gave some offense to Signora Violante, because of which a mishap befell her. For no sooner had she reached her own room than she threw herself into a straw-chair and swooned away. When Signora Francesca Pompilia, wife of the said Signor Guido, found it out, she began to weep and to cry out with a loud voice, saying, "My mother is dying." Whereupon I ran to Signora Violante and began to unlace her, and turned to bring her a little vinegar and fire. But because there was no fire I took some wood and put it in the fireplace to kindle it. When Signora Beatrice saw this she snatched the wood from the fire, in great anger, and told me to take the ashes, which were quite enough to warm her feet. So I took the ashes that were in the fireplace, but because of the intensely cold weather they were cool when I reached the room where the Signora Violante was half dead. Accordingly, the Signora Pompilia and I, both of us weeping, unclothed Signora Violante and put her in the bed, which was as cold as ice. And because I was crying when I returned to the kitchen, after having put Signora Violante to bed, Signora Beatrice said to me: "Do you want me to take a little hemp and wipe your eyes?" Signora Francesca Pompilia also heard this, and she made some complaint to Signora Beatrice, who did not want me to return to the room again nor to make a little gruel, as Signora Violante had ordered.

It happened a few days later, during the month of February following,⁹⁸ that while the Signori Franceschini, Francesca Pompilia, Signor Pietro, and Signora Violante were at the table, they began talking of their purpose of sending me away, as the Franceschini had already dismissed me from service. When Signora Francesca Pompilia, who was at the table with the others as I have said above, heard this, she remarked to Signor Pietro and Signora Violante: "Do you know why they wish to send her away? They believe she wished to censure me because Signora Beatrice said some days ago that she would take hemp and wipe the tears from her eyes, when she was weeping over the

accident that happened to you, mother." Then Signor Pietro spoke up and asked the Signori Franceschini to keep me in their good graces for eight or ten days more, for if he wished to return to Rome with Signora Violante [li] he would take me with them. And he said he could expect this favor at their hands, as it was the first he had ever asked of them. To this, none of the Franceschini replied; but Signor Guido rose from the table and, approaching me, gave me two very good licks. The others then came up. While he was doing this, the Canon, his brother, also gave me some kicks, and his mother struck me and told me to leave at once. As soon as Signora Violante saw and heard this she took pity on me and exclaimed to the said Signori: "Where do you wish the poor thing to go now?" And all the Franceschini with one accord said to Signora Violante: "You get out with her, too." And they called her "slut," and other insulting names, so that Signora Violante went to her room to put on her wraps. The Canon⁵¹ drew a sword and ran after her into the room and shut the door. I, fearing that he would inflict some wounds upon Signora Violante, ran to enter the room and found that the Canon had locked himself within. So myself and Signor Pietro and Francesca Pompilia began to weep and to cry out for help, thinking that the Canon would kill Signora Violante there inside. And after some little time, I left the house, while the said couple and Signora Francesca Pompilia were still making outcry to the Signori Franceschini.

During all the time I remained in the service of the said Signori Franceschini at Arezzo, as I have said above, I can say of a truth that every morning and evening at the table I served the said Signori Franceschini, Signora Francesca Pompilia, Signor Pietro and Signora Violante Comparini. For the food of all this tableful, the Franceschini bought on Saturday a sucking lamb, on which they spent, at most, twelve or fourteen *gratie*. Then Signora Beatrice cooked it and divided it out for the entire week. And the head of the lamb¹¹⁷ she divided up for a relish three times, and for the relish at other times she served separately the lights and intestines. During the days of the week when they ate flesh there was no other sort of meat on the table to satisfy the needs of all the tableful. When he did not buy the lamb on Saturday,¹¹⁸ as I have said, Signor Guido gave money to Joseph, the houseboy, to buy two pounds of beef. Signora Beatrice herself put this to cook every morning, nor was she willing for the rest to meddle with it, and they ate therefrom at the table and carved for the evening meal. And because this meat was so tough that Signor Pietro could not eat it (as they had not cooked it enough), Signor Pietro did without eating meat, for the most part, and ate only a little bread, toasted and in bad condition, and a morsel of cheese. [lii] Thus Signor Pietro passed the days when they bought beef. On fasting days he ate vegetable soup

with a little salted pike, and sometimes a few boiled chestnuts. But always, whether on fasting days or not, the bread was as black as ink,¹¹⁶ and heavy, and ill-seasoned. Then the wine which served for the table was but a single flask; and, as soon as the wine was poured into this, Signora Beatrice made me put in as much more of water. And so I made out to fill the wine flask, half of it being water, and very often there was more water than wine.¹¹⁷ This flask she put on the table, and ordinarily it sufficed for all those eating, although at most, the flask did not hold more than $3\frac{1}{2}$ *foghilette* [half-pints] according to Roman measure.

Furthermore, I say that, not many days after I had left this service, it was public talk throughout Arezzo that Signor Pietro had gone home about half past six in the evening and had found the street door shut so that he could not open it, and he was obliged to knock. When Signora Violante saw that no one about the house was going to open the door she herself went downstairs to do so, but the door was locked with a key. And although she called Signor Guido and others who were in the house, yet no one stirred to go and open it. Therefore Signor Pietro went to sleep at the inn, and in the morning returned to see Signora Violante and Signora Francesca Pompilia. It was likewise said throughout Arezzo that when Signor Pietro complained at having been locked out of the house by the Canon, and when both Signor Pietro and Signora Violante reproached them bitterly about it, a new quarrel arose among them, and because of it both the Signori Comparini were driven out of the house. Signora Violante was received at the home of Signor Doctor Borri, where she dined that evening and spent the night. And Signor Pietro went to the inn to dine and sleep.

When I heard that, I went to the house of Signor Borri to see Signora Violante, but was not admitted. And the wife of Signor Borri told me to go and tend to my own affairs. For she did not wish the Franceschini, who lived opposite, to perceive that I had gone there to see Signora Violante, as some disturbance might arise therefrom. Then the next morning I went to the inn, where I had been told Signora Violante had gone to find Signor Pietro, but I did not find either of them, and was told by the host that they had gone out. So, not knowing where to find them, I returned to the home of Signora Maddelena Albergotti, where I was staying. And I heard afterwards that both Signor Pietro [livi] and Signora Violante had returned to the Inn, where they had breakfasted. Then by the interposition of the Governor of Arezzo they were reconciled with the Franceschini, and they returned indeed to the house of the latter. I heard also that the Franceschini continued to maltreat and insult the said couple, as they had continually done while I was in their service. Therefore they were finally obliged to leave Arezzo and go back to Rome.¹¹⁸

All the abovesaid matters I know from having seen and heard the ill-treatment, which the Franceschini inflicted upon the Comparini, and the insults which they offered them and Signora Francesca Pompilia; and likewise from having heard them talked about publicly throughout Arezzo, where it is known to everyone and is notorious, and where there is public talk and rumor about it.

JUNE 17, 1697.

No. 2.

Various attestations¹¹¹ as to Francesca's recourse to the Bishop and Governor because of the cruelty of her husband and relatives.

to Monsignor the Bishop,¹³⁹ and again to the Governor,¹³⁵ and also to the neighbors, because of the continual scolding and ill-treatment which she has suffered at the hands of Count Guido her husband, Signora Beatrice her mother-in-law, and the Signor Canon Girolamo her brother-in-law. We know this from having met her when she was fleeing as above, and from the public talk and the notoriety of it throughout the city of Arezzo. In pledge of which, have we signed the present attestation with our own hands this abovesaid day and year, etc.

I, CANON ALESSANDRO TORTELLI, affirm the truth to be as abovesaid, and in pledge thereto have signed with my own hand.

I, MARCO ROMANO, affirm the truth to be as abovesaid, and in pledge, etc., with my own hand.

I, ANTONIO FRANCESCO ARCANGELI, affirm the truth to be as is contained above, with my own hand.

I, CAMMILLO LOMBARDI, affirm as is contained above, with my own hand.

I, FRANCESCO JACOPO CONTI³⁵ of Bissignano affirm as is contained above, and in pledge, etc., with my own hand.

I, URBANO ANTONIO ROMANO,¹⁴⁴ a priest of Arezzo, and at present Curate of the parish church of St. Adriano, affirm the truth to be as is contained above, and in pledge thereto have subscribed with my own hand.

Then follows the identification of the handwriting in due form, etc.

[liv] Most Illustrious Sir, my most Honored Master:

Extract from a letter written by D. Tommaso Romani, uncle of Guido Franceschini, to Pietro Compartini in Rome.

I can not do less, etc., departure, she has been little like the Signora Francesca, etc.; she fled from home, and went into San Antonio. And thither ran also Signor Guido, the Canon, and Beatrice, etc., in order that she might come back, and in that belief the Signora Francesca returned home, etc. Yesterday, Signora Francesca and my sister were in the Duomo at sermon. At its close, while she was going away and was near the gate of Monsignore,¹³⁰ Francesca fled into the Palace, which is very near by. This was about seven o'clock in the evening, and there was a fine row in the Palace, etc.

Most Illustrious Signor and most Cherished Master:

Extract from another letter written by Bartolomeo Albergotti, a gentleman, to Pietro Compartini.

At my return, etc., the Signora, his wife, has been melancholy, and two evenings after your departure, she made a big disturbance, because she did not wish to go and sleep¹¹⁵ with Signor Guido her husband, etc. The day before Palm Sunday the Signora went, etc., to preaching, etc., and in leaving there she rushed into the Palace of the Bishop,¹³⁰ etc. She took her station at the head of the stairs¹⁴¹ and stayed there until half past six in the evening; and neither Signora Beatrice nor Signor Guido were able to make her return home. Yet the Bishop did not give her an audience, but his secretary hastened thither and urged Signor Guido and Signora Beatrice not to scold the Signora his wife, etc. And after quite enough of such disputes, they took her back home, etc.

MARCH 21, 1697 [for May.]

No. 3.

Deposition of Francesca as to letters¹¹⁴ asserted to have been written by her to Abate Franceschini, and previously outlined by her husband; recorded in the prosecution brought for her pretended flight.

Francesca Compartini, when under oath, etc., when questioned whether she had ever sent any letter to Abate Franceschini here in the City, while she lived in Arezzo, replied:

While I was in Arezzo I wrote, at the instance of my husband, to my brother-in-law Abate Franceschini, here in Rome; but as I did not know how to write, my husband wrote the letter with a pencil¹¹⁴ and then he made me trace it with a pen and ink it with my own hand. And he told me that his brother had taken pleasure in receiving such a letter of mine, written by myself. This happened two or three times.

When questioned whether if she should see one of the letters written as is told above, and sent to the City to the same Abate Franceschini, she would recognize it, etc.

She replied: If your Honor would cause me to see one of the letters written by me, as above, and sent to Abate Franceschini, I should recognize it very well.

And when at my command the letter was shown to her, about which there was discussion in the prosecution, and which begins *Carissimo Cognato sono con questa*, and ends, etc., *Arezzo 14 Giugno 1694, affectionatissima Serva, e Cognata Francesca Comparini ne Franceschini.*

[IV] She responded: I have seen and have examined carefully this letter shown me by the order of your Honor, which begins *Carissimo Signor Cognato sono con questa*, etc., and ends *Francesca Comparini, ne Franceschini*, and having looked at it, I think, but can not swear to it as the truth, that this is one of the letters written by me to my brother-in-law, Abate Franceschini, in conformity [to my husband's wishes] as is said above.

Dearest Brother-in-law:

No. 4.¹¹³

The tenor of the letter
written as above to Abate
Franceschini.

I wish by this letter to pay my respects to you, and to thank you for your efforts in placing me in this home, where, far removed from my parents, I live now a tranquil life and enjoy perfect safety, not having them around me. For they grieved me night and day with their perverse commands, which were against the law, both human and divine: that I should not love Signor Guido, my husband, and that I should flee by night from his couch.¹¹⁵ At the same time they made me tell him that I had no congeniality with him and that he was not my husband because I have no children by him. They also caused me to run away often¹¹⁶ to the Bishop¹¹⁹ without any reason whatever, and made me tell the Bishop that I wished to be divorced from Signor Guido. And for the purpose of stirring up great discord in the home, my mother told the Bishop, and Signor Guido, and then the entire town, that the Canon my brother-in-law had solicited me dishonorably,⁵² a thing that had never been thought of by him. They urged me to continue these evil counsels, which were far from right and far from the submission due to my husband. And they left me at their departure their express command, by my obligation to obey them, that I should kill my husband, give poison to my brothers-in-law and my mother-in-law, burn the house and break the vases and other things, in order that in the eyes of the world it might not appear after their departure that it was they who had counseled me to commit so many crimes. And finally at their departure, they left me, as a parting command, that I should choose for myself a young man to my taste, and with him should run away to Rome, and many other matters, which I

omit for blushing. Now that I have not her at hand who stirred up my mind, I enjoy the quiet of Paradise, and know that my parents were thus directing me to a precipice, because of their own rage. Therefore, now that I see in their true light these deeds proposed by the command of my parents, I pray for pardon from God, from yourself, and from all the world. For I wish to be a good Christian and a good wife to Signor Guido, who has many times chidden me in a loving manner, saying that some day I would thank him for the reproofs he gave me. And these evil counsels which my parents have given, I have now made known, and I acknowledge myself

Your most affectionate servant and sister,
FRANCESCA COMPARINI *ne* FRANCESCHINI.

AREZZO, June 14, 1694.

Outside directed to Abate Paolo Franceschini, Rome.

[lvi]

[The deposition of Pompilia is translated pp. 69-73 in its completer form an given in the Summary for the Defense. The only additional fact given is this version is the date of the affidavit, Monday, May 13, 1697.³⁴ She had been arrested at Castelnuovo May 1.]

No. 6.

Attestations of priests and other persons, worthy to be accepted in all respects; who gave Francesca assistance even till her death; they speak of her honesty, and her declaration that she had never violated her conjugal faith.

[lvii] I, the undersigned, barefooted Augustinian priest,³⁵³ pledge my faith that inasmuch as I was present, helping Signora Francesca Comparini from the first instant of her pitiable case, even to the very end of her life, I say and attest on my priestly oath, in the presence of the God who must judge me, that to my own confusion³⁵⁸ I have discovered

and marveled at an innocent and saintly conscience in that ever-blessed child. During the four days she survived, when exhorted by me to pardon her husband, she replied with tears in her eyes and with a placid and compassionate voice: "May Jesus pardon him,"³⁵⁹ as I have already done with all my heart." But what is more to be wondered at³⁶⁷ is that, although she suffered great pain, I never heard her speak an offensive or impatient word, nor show the slightest outward vexation

either toward God or those near by.³⁵⁷ But ever submissive to the Divine Will, she said: "May God have pity on me," in such a way, indeed, as would have been incompatible with a soul that was not at one with God. To such an union one does not attain in a moment, but rather by the habit of years.

I say further that I have always seen her self-restrained, and especially during medical treatment. On these occasions, if her habit of life had not been good, she would not have minded certain details around her with a modesty well-noted and marveled at by me; nor otherwise could a young girl have been in the presence of so many men with such modesty and calm as that in which the blessed child remained while dying. And you may well believe what the Holy Spirit speaks by the mouth of the Evangelist, in the words of St. Matthew, chapter 7: "An evil tree can not bring forth good fruit." Note that he says "can not," and not "does not"; that is, making it impossible to infer the ability to do perfect deeds when oneself is imperfect and tainted with vice. You should therefore say that this girl was all goodness and modesty, since with all ease and all gladness she performed virtuous and modest deeds even at the very end of her life. Moreover she has died with strong love for God, with great composure, with all the sacred sacraments of the Church, and with the admiration [lviii] of all bystanders, who blessed her as a saint. I do not say more lest I be taxed with partiality. I know very well that God alone is the searcher of hearts, but I also know that from the abundance of the heart the mouth speaks; and that my great St. Augustine says: "As the life, so its end."

Therefore, having noted in that ever blessed child saintly words, virtuous deeds, most modest acts, and the death of a soul in great fear of God, for the relief of my conscience I am compelled to say, and can not do otherwise, that necessarily she has ever been a good, modest, and honorable girl, etc.

This tenth of January, 1698.

I, Fra CELESTINO ANGELO of St. Anna,
barefooted Augustinian, affirm
as I have said above, with my
own hand.

We, the undersigned, being interrogated for the truth, have made full and unquestioned statement on our oath, that we were present and assisted at the last illness from which Francesca Pompilia, wife of Guido Franceschini, died. She was often asked by her confessors and other persons whether she had committed any offense against the said Guido, her husband, whereby she

Another attestation as above.

might have given him occasion to maltreat her in such a manner as to cause her death. And she always responded that she had never committed any offense against him,³⁵⁵ but had always lived with all chastity and modesty. And this we know from having been present during the said suffering, and from having heard all these questions and responses while we were giving her medical treatment, or otherwise assisting, and from hearing her respond to these questions, as above, during the four days³⁵⁰ while she was suffering from her wounds, as we have seen and heard her; and we have witnessed her dying the death of a saint.

In pledge thereto we have signed this present attestation with our own hands here in Rome this tenth of January, 1698.

I, NICOLO CONSTANTIO, etc., who assisted at the treatment of the said Francesca Pompilia during four days, attest as above, etc.

I, Fra CELESTINO ANGELO³⁵³ of St. Anna,³⁵¹ barefooted Augustinian, say that I was present from the first instant of the case, even to the end of her life, and was always ministering to her. She ever said " May God pardon him in heaven as I pardon him on earth;³⁵⁹ but as for the matter they charge me with, and for which they have slain me, I am utterly innocent."³⁵⁶ In proof whereof she said that God should not pardon her that sin, because she had never committed it.³⁵⁶ She died as an innocent martyr in the presence of another priest, to the edification of all the bystanders, as I have affirmed above with my own hand.

[lix] I, PLACIDO SARDI, a priest, affirm with my own hand as the abovesaid Father, Fra Celestino, has declared, having been present as above.

I, the MARQUIS NICOLO GREGORIO, affirm as above with my own hand.

I, the undersigned, affirm what is contained in the above-written statement, as well as in the attestation of the reverend Father Celestino of Jesu and Maria. I assisted the abovesaid Signora Francesca Pompilia from the first, having picked her up from the earth where she lay in utter weakness because of her wounds. She had her head upon the legs of Signor Pietro Comparini,³²⁸ who was already dead. She made confession in my arms to the Principal of the Greek College, because she could neither rise up nor lie down. And from that hour I never left her, but always ministered to her even unto her death. She was the most exemplary and edifying

Christian I have ever seen. For I saw her resigned to the divine will, and she always relied upon her own innocence, etc.

I, GIUSEPPE D'ANDILLO, with my own hand.

I, the undersigned, attest and affirm what is contained in all the said affidavits, from having assisted the said Francesca Pompilia, etc.

DIONYSIO GODYN, with my own hand.

I, LUCA CORSI, affirm with my own hand as is contained in all the said attestations, from having assisted day and night as long as the malady of the former Francesca Pompilia continued, and from having heard as above.

I, GIOVANNI BATTISTA GUITENS, apothecary, who have assisted at the treatment and care of the said Francesca Pompilia, affirm with my own hand as is contained in all the above affidavits and attestations, from having assisted continually throughout a night and a day at the malady of the same.

I, GIOVANNI BATTISTA MUCHA, the boy of the said Giovanni Battista Guitens, apothecary, affirm with my own hand as is contained above in the said attestation, from having assisted with the former Francesca Pompilia.

Full and unquestionable statement is given by me the here undersigned, Abate Liberato Barberito, Doctor of Theology, that, as I was summoned to assist at the death of the said Signora Francesca Comparini, I often noticed, and especially during an entire night, that the above-named defendant suffered the pains of her wounds with Christian resignation, and condoned with superhuman generosity the offenses ³³⁹ of the one who had caused her innocent death with so many wounds. [Ix] I also observed during that night the tenderness of the conscience of the above-named. For she passed it in showing the unwavering feelings of an heroic and Christian perfection. And this so much so that I can attest ³³⁴ that during the experience I have had, having been four years Vicar in the Cure of Monsignor, the Bishop of Monopoli, of blessed memory, I have never observed the dying with like sentiments. And this is all the more so in an evil caused so violently by another. Therefore in pledge, etc. Rome, this tenth day of January, 1698.

I, ABATE DI LIBERATO BARBERITO, affirm as above, etc.

[File-title of Pamphlet 4.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case with qualifying circumstance.

For the Fisc.

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Romana Excidi.

[Pamphlet 5.]

Most Illustrious and Most Reverend Lord:

The deplorable slaughter of the entire Comparini family, which occurred in this dear city of ours on the second night³¹⁹ of the current month of January,³⁶⁶ and the shedding of their blood, cries out from earth to God for vengeance upon the criminals. And in order that we may fulfill the obligations of the office we are occupying, we have paid down the price of toil to narrate here with faithful pen the series of events. From this, my Lords Judges may readily see what laws may be applicable for a decision as to this cause and for the punishment of the delinquents for the same deed, etc., and so Barbosa says in his axioms in jurisprudence, axiom 93, No. 1: "Just as from the deed the law takes its rise, so from the deed the law dies."

The series of facts, therefore, is as follows:⁴⁶² Guido Franceschini, of the city of Arezzo, married^{458 461} Francesca Comparini, for whom, by Pietro and Violante Comparini, there were promised as dowry,⁹¹ among other matters, certain properties subject to a reversionary interest.⁹⁹ For they had brought this same Francesca up in their home as their own daughter, and as such they married her. Then, as the aforesaid Pietro and Violante had no other children, they left their home in the City to go and live in the home of Franceschini at Arezzo.⁹⁴ There, for some time, they continued to live together in peace; but, as often happens among friends and relatives, contentions and quarrelings arose.⁹⁵ On account of these, the aforesaid Pietro and Violante left that home and the city of Arezzo, and went back to Rome.¹⁰⁰ In the meantime, as the flame of this enkindled hatred increased, a lawsuit was instituted²⁶⁰ as to the dowry once promised, but now denied by Pietro, on the pretext that Francesca was not indeed the daughter of the same Pietro and Violante, but that, after a pretense of her birth had been made,¹⁰⁸ she had been received and brought up by them. And for this reason the said Guido and Francesca could not hope for the inheritance of the properties under the reversionary interest.⁹⁹ But although Franceschini gained a favorable judgment on this point,²⁶³ yet when appeal had been made on behalf of Pietro Comparini,²⁶⁴ Francesca declared that she was ill-treated in the home of her husband by himself, and therefore desired to leave that home. Accordingly, with the aid and companionship of Canon Caponsacchi, a relative of the said Franceschini, as is supposed, she ran away. But Franceschini had notice of his wife's [lxii] flight and, following her up, he overtook her

at the tavern of Castelnuovo. There he went to the governor²²⁶ of that place and saw to effecting the capture²²² of his wife and the Canon, as indeed followed. Then the quarrel was continued. A criminal suit²⁶⁹ was brought in this Tribunal of the Governor of the City;²⁷⁰ the process of action was arranged, and the counsel on both sides was often heard, both by word of mouth and in writing. At last it was decided that owing to lack of proof²⁷³ of adultery the said Canon should be banished to Civita Vecchia²⁷¹ and Francesca should be held in safe-keeping.²⁷⁶ But because the Comparini claimed that the furnishing of food in the safekeeping was the duty of Franceschini, and the latter declared it lay with Comparini,^{282 283} the most Illustrious Lord Governor, having first secured the consent of Abate Paolo,²⁸⁸ the brother of Guido and his representative in the case, assigned the home²⁸⁴ of the Comparini to Francesca as a safe and secure prison under security.

While these contests were still pending,²⁶⁶ both in the civil and criminal cases, as well as in that for divorce brought by Francesca, the wife,²⁶⁶ this same Franceschini schemed to take vengeance upon the abovesaid. For the execution of this criminal purpose he brought together³¹² Domenico Gambassini of Florence, Alessandro Baldeschi of the region of Castello, Francesco Pasquini Antonii of the Marquisate of Monte Acuto, and Blasio Agostinelli of the town of Popolo, and dwelling at the Villa Quarata. He provided them with swords and dagger,⁴¹³ prohibited by the Bull of Alexander VIII, and entered the City in company with the aforesaid men. Approaching the home of the Comparini, at the first hour³²⁰ of the night, he secured the opening of the door to himself under the pretense of bringing a letter,³²¹ sent to Violante by the said Canon Caponsacchi, then staying at Civita Vecchia. As soon as the door of the home was opened by the said Violante,³²³ the aforesaid Guido and his companions immediately set upon her. She was cut to pieces with their swords and immediately fell dead. Pietro likewise was cut down and died. Francesca, however, tried to hide under a bed,³²⁵ but was found and wounded in many places. Then, as if God granted her the favor,³⁴⁸ she was not left utterly dead, though after a few days she also passed away; and thus she could reveal this monstrous crime. As soon as my Lord Governor had notice of this, with most vigilant attention, he saw that the malefactors were pursued beyond the City.³³³ Accordingly that same night they were discovered in the tavern at Merluccia³⁴⁰ with firearms and illegal swords, [lxiii] still bloody,³⁴² and were taken back to prison. Then, when a case had been made against them, they were examined as to the crime. Some of them indeed confessed it, and although the others made denial of the management and knowledge of the killing of the entire family, yet against them there are most urgent presumptions of the knowledge and management abovesaid. Furthermore, from the

same prosecution the gravest proofs have resulted, such as can be but slightly attacked and controverted by the Defense.

Hence, when this cause may be presented to receive judgment, we believe that no foundation can afford defense for the criminals to escape the capital penalty, so far as they have confessed their crime, or can release those who have denied it from the rigorous torture of the vigil.⁵²⁶ For what if the Defense do strongly argue the question as to whether a husband who kills an adulterous wife, not immediately and when found in adultery, but after an interval,⁴⁰⁵ ought to be excused from the ordinary penalty of the *Lex Cornelia de Sicariis*? Some authorities indeed give an affirmative opinion for the excuse of the husband, as is to be seen in Giurba. [Citations.] Yet all of these authorities for mitigating the penalty upon a husband who kills his wife after an interval are moved by this reason: That since the sense of injured honor always oppresses the heart, it is difficult to restrain just resentment; for this reason the defense of the honor is said to be immediate when done as quickly as possible.

But there are indeed many other authorities who stand by the negative, asserting that a husband who kills his wife, otherwise than when taken in adultery and in acts of passion, should be punished with the ordinary penalty. [Citations.] D. Raynaldus [Citation] says this opinion is the truer and the more advantageous to the state, nor should one depart from it in giving judgment. Sanzio says that it was often adjudged in this Senate that a husband was not excused by adultery legitimately proved, if he killed his wife after an interval; [lxiv] and for this reason, because formerly, according to the law of Romulus, a husband could kill his wife, but the *Lex Julia* permitted him to kill only the vile adulterer, as Matthæus proves. [Citation.]

But in this our present show of fact we believe we are dealing with a matter outside of the difficulty of this proposed question. For the authorities cited above for the contrary opinion hold good, and should be understood to do so, whenever the contention is about a husband who has killed his wife without excess of law and with no concurring circumstances and aggravating qualities, and when moved only by just grievance. But it is otherwise when, as in our case, excess and contempt of law is present and aggravating circumstances and qualities concur.⁴⁰⁸ Laurentius Matthæus [Citation] testifies that, according to common practice, such a distinction has been followed out. And after he had affirmed that a husband should be excused from the ordinary penalty and be punished more mildly, he adds: "For these reasons, it is the common practice to weigh the effect of the grievance and to punish only the excess; so that if the suspicion of guile in the manner of killing is present (as he considers any circumstance which tends toward treachery) the penalty is aggravated."

The aggravating circumstances which concur in our case are indeed many, and they are so grave that any one of them is enough reason for imposing the death penalty or for qualifying the crime.

The first of these is the assembling of armed men,⁴⁰⁹ for according to decrees of the Governor of this City the penalty of death and of the confiscation of goods is inflicted upon the one assembling the men; and this is true even if those assembled are but four,⁴¹⁰ as is read in chapter 82 of the same *Banns*. This circumstance and quality can not be evaded on the authority of certain jurists who assert that it is permissible for a husband to kill his wife, even by means of men thus brought together. For the said authorities speak, and should be understood, in a case in which a husband may kill with impunity an adulterer and his own wife in the very act of adultery, or in the home of the husband. But it is otherwise if she is killed after an interval, or outside of the home of her husband; according to what is given. [Citation.] Or these matters might hold good if in no other way he could kill the adulterer and his wife. So think all authorities who can be adduced in favor of the husband. This can not be said in our case since *Franceschini*,⁴¹¹ while following his wife with firearms, could have taken [lxv] vengeance at the inn of *Castelnuovo*. But he had recourse to the judge,²²² and chose the legal way of punishing his wife and the Canon with whom she fled. Or these claims would hold good if he had assembled a smaller number of men, whereby the crime of conventicle would not have been established. And this is the more strongly to be held because we are not concerned with a deed that is unpunishable, and permissible by law, as I have said.

Nor do we believe that the Defense can make a claim that the husband may kill an adulterous wife after an interval with impunity; for all the authorities who can be adduced in favor of the husband free him indeed from the ordinary penalty, but not from an extraordinary penalty, as those adduced by us above in § *Hinc cum Causa* can be seen to hold. If therefore, in our case, the husband committed a crime punishable in itself, how could he assemble a number of men forming a conventicle prohibited by the *Banns*, without incurring the penalty threatened by them?

The second quality and circumstance is the carrying of arms^{412 496} contrary to the specification of the Constitution of Alexander VIII, which is extended to the whole Ecclesiastical State. Still less can the authority of jurists be alleged in excuse from this threatened penalty, if the husband kill an adulterer and the wife with prohibited arms. For aside from the response given by us in the explanation of the first circumstance of assembling and of conventicle (namely that these authorities hold good and should be understood to apply only in cases permitted by law, and therefore unpunishable), we say still further

that they have very little application as regards the arms we are discussing; since the said Constitution prohibits not merely the carrying of such arms, but even their retention, manufacture, or introduction into the City and the Ecclesiastical State, under the penalty of rebellion and criminal insult to the majesty of the law.⁴²⁰ And so far as we are acquainted with such cases as are permitted by law, the authority of these jurists should be understood to hold good concerning arms, the carrying of which is indeed prohibited, but not the retention and introduction under any pretext whatsoever, even the pretext of justice; as is included in this same Constitution § 1 where we read: "Or to carry them on any pretext whatever, whether of military service or of the execution of justice, and still less to keep them in one's home or elsewhere." And in § *Ad haec* it prohibits even the introduction of them: "the retention of them at home, in storehouses, and elsewhere, their introduction into the Ecclesiastical State, and their manufacture."

If therefore the retention and introduction of such arms is prohibited, even when on the pretext of executing justice, [lxvi] ridiculous indeed would be Franceschini's pretense that he could approach the City and the home of his wife with such arms to vindicate, after an interval, this pretended offense of honor. This is the more certain as the crime concerning such arms is grave and of itself is punished with the capital penalty, as we have proved. In this case, when the crime actually follows, if the penalty for carrying the arms is greater than for the crime itself, the penalty for the graver offense is held to apply, and includes the lighter. [Citations.]

The third circumstance is that Franceschini and the aforesaid men committed the murders in the very home and dwelling-place^{417 501} of the Comparini; because homicide is always said to be qualified when it is committed in the home of the one slain; since the home should be a safe refuge for its master, etc. Then also Franceschini entered with changed garb,^{418 504} in which case the murder is said to be committed *ex insidiis*. [Citations.]

The fourth quality and circumstance is that the said Francesca was under the power of the judge,⁴¹⁹ since the home, as we have said in our narrative of fact, was assigned to her under bond to keep it as a safe and secure prison. And hence she was under the protection of the court. [Citations.] And this is especially true when arguing in favor of the one who is under protection of the court, whatever may be said when arguing to his prejudice. And therefore the law holds that one under the protection of the court can not be killed under less penalty than the death [of the assassin]. [Citations.]

But all debate seems to cease since it is proven in the process that the said Franceschini approached the said home with his company of men with the thought and intent [lxvii] to kill not merely Francesca,

his wife, but also Pietro and Violante.⁴⁰¹ These, as he himself acknowledges, he hated⁴²¹ with a deadly hatred, because of the suit²⁰⁰ they had brought and because¹¹² they had urged Francesca to poison her husband and her brother-in-law, and had kept his wife in their home, so that still further, in the continuation of the adultery,²⁹³ his honor was offended. But aside from this, as we have said above, Francesca was placed in the said home²⁸⁴ by the authority of the judge with the consent²⁸⁸ of the brother of this same husband, and so the question does not enter as to whether a husband may lawfully kill the relatives, friends, and servants of his adulterous wife, even if he does suspect them of affording their leave or assent to the wife committing adultery; since the special rights and privileges conceded to the husband should not be multiplied against the wife, and be given greater scope, but rather should be strictly interpreted. [Citation.] This holds good not merely when one is arguing about the prejudice of a third party,⁵³⁴ but concerning one's sole prejudice. [Citation.] In our very circumstances we read that the permission can not be passed from person to person. [Citation.] Yet we can more truly declare that such an assertion of adultery on the part of Franceschini is calumniously false; for, in the very face of death, Francesca protested, to the very damnation of her soul, that she has given no offense³⁵⁵ to her husband's honor. This protestation is the more to be believed³⁸² since those about to die³⁶³ are not presumed to be unmindful of their eternal salvation. [Citation.]

The other causes adduced by Franceschini himself, so far as they are true, can indeed prove hatred and enmity existing between himself and the couple, which would tend in that direction and so would serve to prove in him a cause for their premeditated murder. But this is not sufficient to excuse him from the ordinary penalty of death, which premeditated homicide altogether demands. [Citations.] [lxviii] And it is for this reason, because the laws prohibit private vengeance (that is, vengeance which those without public office usurp to themselves because of their hatred, by killing or otherwise injuring men) [Citations]. Raynaldus affirms that in premeditated murder the ordinary penalty is inflicted not merely upon the slayer himself, but also upon all others who aid and give help, or concur in committing the murder by their help or counsel. [Citations.]

FRANCESCO GAMBI,
*General Procurator of the Fisc and of the
Reverend Apostolic Chamber.*

[File-title of Pamphlet 5.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case.

*In behalf of the Fisc, against
Count Guido Franceschini
and his Associates.*

*Memorial of fact and law of the Lord Procurator
General of the Fisc.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[lxix] Romana Homicidii cum qualitate.

[Pamphlet 6.]

Most Illustrious and most Reverend Lord Governor:

Since the chief defense of Count Franceschini, the Accused, as we have heard, consists in the pretended plea of injured honor, by which he was moved to crime, it is the office of the Fisc to disclose the lack of foundation for this plea, in order that this atrocious and enormous crime may be punished with the due penalty.

Therefore I assume that we ought to examine the foundations on which the asserted plea of injured honor may rest; namely the flight of the unfortunate wife from the home of her husband in company with Canon Caponsacchi, with whom she was taken at the inn of Castelnuovo, and the pretended love letters which were put forward in the prosecution of Pompilia for the said flight and departure. The pretended dishonesty of the wife is drawn from these two; but along with them other proofs were brought together in the said prosecution; the latter, however, are either altogether stupid or equivocal, or else unproven. This may be inferred from the dismission of the said Francesca, his wife, merely with the precaution of keeping her home as a prison^{276 284} and of the Canon with a three years' banishment to Civita Vecchia.²⁷¹ Such action shows that in this same prosecution there was found by the Fisc no legitimate proof of dishonesty and of the pretended violation of conjugal faith, which the husband had charged against her.

And indeed, from the defenses then made and even from the trial itself, a very just cause has clearly appeared, which forced the luckless girl to flee from the home of her husband and to go back to her own home, there to live safely and quietly with her parents. Notorious indeed are the altercations²⁵ which, on account of the parsimony of the Franceschini home, straightway arose between the parents of the wretched girl on the one hand, and the Accused, his mother, and his brothers on the other hand. The former in vain bewailed the fact that they had been deceived by the show of no small opulence, on account of the false statement of an annual income of 1,700 scudi,²² which was afterward shown to have no existence. Indeed, while they stayed in the home of the accused husband in Arezzo, they were so badly treated by himself and his relatives²⁵ that after a few months²⁸ they were obliged to leave it and return to the City.¹⁰⁰ During the whole time they lived there, contentions and reproaches throve continually among them. The Comparini were indeed excited with just indignation by the deception they had suffered. This is evident from the letters of

Abate Paolo Franceschini, which presuppose these troubles and which were considered for the Defense by the Procurator of the Poor. These prove that hostility of mind had even then been conceived against the unfortunate parents, especially the one written March 6, where we read: "I write again to you that I do not wish to imitate him in his manner of writing, not being of his mind to sow broadcast in letters such words as would merit response by deeds and not by words; and these are so offensive that I have kept them for his reproof and mortification." And further on he says: "So that if you give us trouble, which I will never believe, you yourself will not be exempt therefrom." But sufficient proof results from the letters, as the following advise. [Citations.]

[lxx] And although these letters do not make clear the nature of their altercations, yet some of them more than prove the reproaches had so increased that their bitterness grew into hatred, as is evident from the letter of February 12, 1694, where we read: "But hearing from the one side or other that the bitterness between them, not to say the hatred, is increasing." It would be all too easy for the Accused and the Abate, his brother, to prove, by showing letters written to him, that the reproaches were unjust and were occasioned by the Comparini themselves. This is apparent from the tenor of the said letter, where we read: "Because I feel that the enemy of God has put strife among them, it is improper that I should fulfill my duty toward you of a reply." But since the Franceschini did not show such letters, the presumptive truth of these same complaints and of this cause of complaint and altercation is strongly against the ones thus concealing them. In such circumstances the Roman court thus affirmed. [Citations.]

But the truth of the charge of ill-treatment toward the parents, whom he was obliged by the dowry contract to provide with food, is also to be drawn from the deposition of a servant,¹¹⁰ as given in the Summary, No. 1 [cf. pp. xlxi-liii]. And since this would excite the pity of any who read, it becomes all the clearer that, by such very ill-treatment of her parents, the mind of the wretched wife was greatly exasperated; for she kept grieving in vain at seeing them thus troubled; yes, and she was even prohibited from grieving.

And anyone may know that the return of her parents to the City would indeed disturb with a considerable and very just grief this wretched child who was not more than fifteen years old. For she was destitute of all aid, and was left exposed to her husband's severity, because of which she daily feared that she was in peril of her life. In vain did she have recourse to the Reverend Bishop¹¹⁰ and to the Governor,¹¹⁵ Summary, No. 2 [cf. p. liii]. In vain was the interposition of certain noblemen tried; which had proved utterly useless, as is evident from the letter of March 6, where we read: "But what remedy can I give you, when so many gentlemen, friendly to both parties have inter-

ferred to settle the troubles and it has not turned out well?" She might indeed think that no other remedy was left her than to flee from the abode of her husband and to seek again her father's home. As therefore she fled to escape deadly peril, her flight can afford no proof of dishonesty nor of the violation of conjugal faith; for it is attributable to a lawful rather than to a criminal cause. [Citations.]

But there was another urgent cause for her eagerly desiring to seek her father's hearth, namely the ill-health of her father. She speaks of this in the letter which mentioned [lxxi] that she can not look for the company of Gregorio Guillichini, and that this task had to be remitted to the Canon [Caponsacchi] also. Hence we can well infer that she was arranging for the flight for legitimate reasons.

No reliance whatever can be placed in the letter¹¹² written by this same wife to Abate Franceschini. In that she thanks him for having joined her in marriage with the Accused, his brother. And she also acknowledges therein that, since the departure of her parents, she was living a life of utter tranquillity; because their evil persuasion, which was alienating her from her husband, had ceased. She also reveals a very base plan that had been proposed to her, namely to destroy the entire household. Now the wife in her sworn statement frankly confesses¹¹³ that she wrote this letter to appease her husband, and that he had marked the characters,¹¹⁴ which she had afterward traced with a pen. This statement is found in an extract from her sworn testimony as given in our Summary, No. 3 [cf. pp. liv-lv]. And a mere reading of the said letter so thrills one with horror that it is incredible¹¹² that the luckless girl could have written such matters to the injury and detraction of her own parents, unless she had been compelled thereto by fear of her husband. For this reason the same letter is given in our Summary, No. 4. [Cf. p. lv.]

But even just ground of fear, because of which the luckless girl was moved to flee, has come to light, namely the lawsuit²⁶⁰ brought by her father against the Accused for the nullification of the dowry contract. This contract had been made on false grounds; for Pietro had believed that he was promising the dowry to his own daughter; but then, from a confession¹⁰³ made by the mother, he had found out that she was none such and that Violante had made pretense of giving birth to the child for the purpose of deceiving her husband and barring his creditors.¹⁰⁷ Since Pietro had assigned all his property as dowry⁹¹ (and indeed it was of considerable value when we consider the quality of the persons concerned) he soon raised a dispute about it. And we may well fear that very grave and even deadly hatred arose therefrom. Thereby the conjugal peace, which had been disturbed by long-continued altercation, was utterly destroyed by recrudescence of hatred. For a lawsuit as to a considerable amount of money, much more as to an entire property,

would produce this effect, as daily experience well teaches us and as Grammaticus and others assert. [Citations.]

Such just fear should be well considered by a prudent judge, who will take into account the circumstance of the persons and of the time. [Citation.] In our case it may be absolutely affirmed that these matters should be so considered, inasmuch as not merely a girl of tender age (as was the unfortunate wife, who was destitute of all aid and exposed to the severity of the husband, who had sought her life with a pistol¹³² and had threatened her with death on trivial suspicion), but even a woman of greatest fortitude [lxxii] would be unable to bear being exposed to such constant risk of her life and would see the necessity of taking care of herself. And whatever the cause, even if it were merely supposititious, it would be enough to excuse her according to the text. [Citations.] And Canon Raynaldus holds that it is enough if one sees the signs or acts of manifest desire, or preparations thereto. How much more excusable and how worthy of pity should Francesca be considered, since she had such an urgent and such a well-verified cause for fleeing? Mogolon holds that the mere sight of arms, even though the one having them does not use them nor unsheathe them, is just cause for fear.

Nor can presumption of dishonor and of violated conjugal faith arise from the company of Canon Caponsacchi, with whom she fled, and for which flight he was condemned to three years' banishment in Civita Vecchia.²⁷¹ For the luckless girl was destitute of all aid, and the demands of her age, of her sex, and of her station in life, did not admit of her undertaking so perilous a journey either alone, or in company with any baseborn woman. For then, in escaping dangers at home, she might inadvertently expose herself to even graver perils; as might have happened if while alone she had been overtaken by her husband in the journey. Nor could she find any safer companion than this very Canon, who was bound by friendship to the Canon Conti.³⁵ And the latter, who was a familiar friend and blood-relative of the Accused, although he had great pity upon her condition, judged it safer¹⁴⁵ for her to flee with Caponsacchi, whom he believed²⁸ to be apt and far-seeing to bring about the desired end. Otherwise she would have undertaken this flight with even greater risk. Therefore this necessary and prudent choice of the lesser evil excludes all suspicion of pretended dishonor. [Citations.]

This suspicion is also excluded by the manner in which the flight was put into effect, namely in hurrying to the City by the direct route and with the greatest possible speed.²⁰³ For if the unfortunate girl had fled for the purpose of satisfying her lust with the same lover, the Canon Caponsacchi (as was charged elsewhere and as is repeated now even more bitterly in order to prove the plea of injured honor), she would either have delayed somewhere out of the public highway,

where she could not be seized by the Accused, or she would not have approached the City with such great speed. She would have done neither of these, unless she were making the journey for the purpose of seeking again her father's hearth, where she hoped to find security for her life and her honor. It would be far too imprudent a plan for a lover to take a wife from the home of her husband to some other place where he could not possibly satisfy his lust. [lxiii] This improbability alone would be enough to prove the truth of the cause given by the wife in her affidavit—namely that she had fled to avoid the deadly peril in which she feared she was placed, and that she might return to her father's hearth. The Canon also gave her his aid and companionship out of mere pity,¹⁹⁰ and her honor was kept entirely untouched. The probabilities are always to be very much observed in arguing about a crime, or in excluding it, as the following hold. [Citations.]

Still less firmly established is the other ground for the asserted plea of injured honor, which has been offered elsewhere by the Accused on the basis of the asserted love letters.²²² These letters, it was pretended, had been written in part by that most wretched girl to the Canon, and in part by the Canon himself. All these, it was claimed, had been found in the privy of the inn at Castelnuovo,²³¹ where they were said to have been cast for the purpose of hiding them. Response was indeed then given by the Procurator of the Poor that the identity of the handwriting was unproved and uncertain; for the letters did not show to whom they were directed. And these responses were indeed admitted, since no punishment²⁷² was inflicted upon Francesca, and she was simply dismissed with the precaution of keeping her home as a prison.²⁸⁴ And even though these letters, when we investigate their bearing, seem to give proof of excessive good will,²⁵² yet Francesca could have made pretense of this for the purpose of winning over the Canon, who was reluctant (as she herself acknowledges in her affidavit) to afford her aid by giving her his company back to the City in the execution of her premeditated flight. It is indeed quite evident that the letters were prepared for this purpose. (Summary, No. 5.) [Cf. pp. lvi-lvii.] And therefore this wretched girl, who was destitute of all aid and was placed in imminent risk of her life, should be judged worthy of all pity, if with gentle and even with loving words she tried to entice the Canon, whom she believed was well suited to afford her aid.²⁴⁷ Nor can stronger proof of violated modesty be drawn from these letters written for the purpose of the flight than from the flight itself. Nor is it a new thing for the most chaste of women to use similar arts sometimes for quite permissible ends. In the sacred Scriptures we read that Judith²²⁶ did so to deceive Holofernes, for the purpose of freeing her country. This luckless girl

could therefore do so without any mark of dishonor, for the purpose of escaping deadly peril.

We may speak still further of her confidence in her own continence as well as in the integrity of the Canon. Concerning this, a certain witness,⁵⁴ examined by the Fisc in the said prosecution at the instance of Count Guido, who was then present, testifies to hearing from Gregorio Guillichini¹⁴⁶ (likewise a relative of the Accused) as follows: "Signor Gregorio then added that the Signor Canon was going there for a good reason, and that therefore Signora Francesca had desired to go to Rome. And he told me also that no ill could arise from it, because there was not the slightest sin between them." The deposition of this witness, which is directly contrary to the party who had brought her into court, fully proves our point, as the following hold. [Citations.] [lxiv] And therefore, since the luckless girl can be suspected of no evil from her association with Canon Caponsacchi, and since she had no other help more suitable for carrying out her plan, her dealings with him by letter ought to be excused as ordered to this end, even though we may read certain loving expressions in them. The latter, indeed, should be considered rather as courtesies adapted to winning his good will, and they should always be interpreted according to the thought of the one proffering them. [Citations.]

Still further, there is added the participation of the Canon Conti,⁵⁵ a nobleman and a relative of the Accused, who forwarded the attempt. It is incredible that he would have been willing to plot against the honor of Guido; but he would merely wish to snatch that wretched girl from imminent death because of his pity of her. And such participation is made clearly evident from the very letters which it is pretended were written by Caponsacchi.

Of lighter weight still are the other proofs of pretended dishonesty: [first] the approach of the Canon¹⁷⁰ to the home of the Accused at night time, for the purpose of speaking with the wife who was slain; [secondly] the kissing²⁰⁶ on the journey to Rome, concerning which Francesco Giovanni Rossi,²⁰⁵ driver of the carriage (commonly called calesse),¹⁹² bears witness; and [third] the pretended sleeping together²¹⁵ in the same bed at the inn of Castelnuovo. As regards the first of these three, there is defect of proof; for it rests upon the word of a single witness only, Maria Margherita Contenti,^{54 171} and she endures the most relevant exception of being a public harlot,¹⁷² and so she alone can prove nothing. [Citations.] And since such approaching of the house was ordered to the permissible end of removing the wretched girl from the imminent peril of death, by taking her back to her father's house, it can not be brought as a proof of illicit commerce. For the mere possibility that it was done for this purpose is enough to oblige us to take it in good part, according to the text. [Citations.]

This is especially so since the very witness who swears to this approach of the home states, by hearsay from the said Gregorio Guillichini,¹⁴⁶ that it was to a good end [cf. p. lxxiii], and that no sin was taking place between the Canon and the wife who is now slain. And as Guillichini was better informed, and was indeed a friend [lxxv] and, as I understand, a relative of the Accused, this excludes all suspicion to the contrary. With this testimony another deposition seems to agree, namely, that of the Canon Franceschini, brother of the Accused, who when questioned as to whether he knew if any intimacy had existed between Canon Caponsacchi and Francesca, replied: "This we never knew of beforehand; but after the criminal flight the whole town said that there must surely have passed some correspondence between them." His ignorance quite excludes and renders improbable any furtive and illicit approach to the home by the Canon Caponsacchi. For if the Accused had indeed threatened to kill his wife on account of unjust suspicion of Caponsacchi, we may well believe that Guido himself, his brother, and all the household would have kept guard for her safekeeping with all their might. And so, the said approach to the home, if it had been frequent (as is alleged), or if it had been for an ill end, would have been observed by them.

[Secondly] under this same defect of proof lies the pretended kissing of each other on the journey. As to this matter only a single witness testifies, whose excessive animus is shown by his assertion; for he asserts that he saw this at night; nor does he give any reason for his seeing it, such as that the moon was shining, or that he could see because some artificial light was dispelling the gloom. As no such reason is given, he deserves no credence, as the following observe. [Citations.] Another very great improbability is added thereto—namely, that while he was driving the carriage with such velocity that it rather seemed to fly than advance swiftly, he could not have looked back to see such mutual kissing.²⁰⁶ This improbability likewise takes away from him all right to belief, according to what the following hold. [Citations.]

But the assertion of that most wretched girl herself is also well suited to exclude all suspicion of her pretended unchastity. This was made by her after she had suffered many severe wounds, in the very face of death³⁶³ itself, at the demand of the priests and other persons ministering to her. For, according to their attestation, she asserted that she had never sinned against her conjugal faith³⁶⁵ and had always conducted herself with all chastity and shame [cf. p. lviii]: "We were present and assisted at the last illness from which Francesca Pompilia, wife of Guido Franceschini, died. She was often asked by her confessors and other persons whether she had committed any offense against the said Guido, her husband, whereby she might have given him occasion to maltreat her in such a manner as to cause her death. And she always

responded that she had never committed any offense, but had always lived with all chastity and modesty." And Fra Celestino Angelo of St. Anna, of the order of barefooted Augustinians, in his testimony³⁵³ bears even more exact witness to this constant assertion of her innocence, where he writes [cf. p. lviii]: "She always said, 'May God pardon him in heaven, [lxxvi] as I pardon him on earth, but as for the sin for which they have slain me, I am utterly innocent': in proof whereof she said that God should not pardon her that sin, because she had never committed it."³⁵⁶ An assertion like this, indeed, given in the very face of death,³⁶³ deserves all credence, since no one is believed to lie at such a time,³⁶² as the following assert. [Citations.] Menocchius speaks in these very circumstances of one suspected of heresy, saying that such suspicion is removed if in the hour of death the accused say and protest that he had lived and wished to die and to trust according to what is pleasing to the Sacred Roman Church, etc. [Citation.] And Decian cites the opinion of Alberic, who declares that by means of an assertion of this kind, made before the Cardinals, the memory of Pope Boniface had been defended, and that this very Alberic had in this way defended Galeatus, Viscount of Mediolanum.

And this is more especially true since all the said witnesses agree that this most wretched girl died with the highest edification of the bystanders, and that she had always shown the deeds of Christian perfection, as we find in the said attestations, where we read: "And from having seen her die the death of a saint." [Cf. p. lviii.] And there is another statement of the said Father Celestino Angelo, which infers the innocence of her past life from her conduct just before death. All these matters are given in our Summary, No. 6.

But, however, rightly the Accused might draw some suspicion of his wife's dishonesty from her flight and from these letters, the tenor of which seems to prove them love letters (which suspicion could excite due anger), yet this would not make excusable such truculent vengeance, taken after so great an interval. For this vengeance was taken, not merely upon his most wretched wife, but also upon her parents, who were entirely off their guard and quite undeserving of such a fate. And these murders were attended with such grave circumstances, aggravating the crime, that he would have to be punished with death even if he had not confessed the murders. For although just anger because of violated conjugal faith usually moderates the penalty for a husband killing his adulterous wife, yet one can no longer argue for total impunity after an opportunity to take vengeance on the adulterer and adulteress has been thrown away. [Citations.]

But an especial and indispensable requisite is that the wife [lxxvii] be taken in adultery, according to the text. [Citation.] "For thus it wishes this power to lie with the father, if he take his daughter in

her very sin." Labeo also approves this, and Pomponius writes that she may be killed when taken in very licentiousness, and this is what Solon and Draco say. [Citations.] Much more does this hold good in the case of a husband, whose wrath may be kindled much more easily against a wife by sinister and unjust suspicion conceived about her. For the husband is not always accustomed to take good counsel for the wife, which the law presumes that the father does by natural instinct, etc.; and it excuses the father only when he kills his daughter along with her defiler, or inflicts wounds unhesitatingly upon her.

And this is so true that it is not enough if the wife be found only in acts that are remote from, or merely preparatory to adultery, as authorities commonly affirm. [Citations.] John Teitops holds thus, and I think it well to quote his words, since the Judges may not have him at hand, and he thus explains the words of the said text: "Therefore they argue that acts preparatory to adultery do not suffice, but the obscene commingling of limbs is required." And after citing his authorities, he adds: "And this is more clearly evident from the words of Solon as given by Lucian, the Eunuch," where we read: "Unless they lie who say that he was taken in adultery." And then he criticizes the opinion of Accursius, who asserts that acts preparatory for adultery are enough. And in the second paragraph after this decision is given he asserts that his opinion should be understood to be concerning immediate preparations, and he so explains his decision, where he says: "From the taking of the adulterer alone and naked with her alone and naked, and lying in the same bed, violent and certain suspicion of adultery arises, wherefrom the sentence of divorce may be granted."

But the laws adduced (at letters I & J) show that strong suspicion does not indeed suffice. For this sort of discovery is the true taking in the act of adultery. And from a civil case under the said letter, one argues weakly for proof in a criminal cause. [Ixxviii] For no one can be condemned, much less killed, on suspicions alone in the absence of law. And violent suspicion is not indubitable ground for proof, such as is required in criminal cases. But indeed such suspicion is fallacious, because persons might be found to act thus for the purpose of committing adultery, and yet not actually to have committed the adultery, as Gravetta and others say.

The Accused might indeed have contended merely for the tempering of the penalty if he had killed his fugitive wife in the act of taking her at the inn of Castelnuovo²²² in company with Canon Caponsacchi. But when he neglected to take vengeance with his own hand and preferred to take it by law, he could not then kill her after an interval. This is according to the text [Citation], which affirms that one can not put off vengeance from day to day. [Citations.] Farinacci asserts that it was so held in practice, lest men should be given the opportunity of avenging

their own wrongs. And he confutes Bertazzol, who places on the same footing a case of taking in adultery, and says that the wife may be convicted of it provided that there be no doubt of it. Nor may the suspicion of the husband, which gave a strong ground for the difference, be unjust or too ready. Because just grievance, exciting a wrath which usually disturbs the mind of the husband, is verified by the actual taking of the wife in adultery or in acts very near to it and not after an interval, although his suspicion may be very strong. And so the laws which excuse a husband because of just and sudden anger can not be extended to cover vengeance taken after an interval. For in the latter case neither the impetuosity nor the suddenness of the anger is proved, but the murder is said to be committed in cold blood. But if for the purpose of restraining the impetus of raging anger, lest the husband take vengeance on his own authority, he is not excused from the penalty of the *Lex Cornelia de Sicariis*, provided he kill his wife after an interval, how much less excusable will he be if after choosing the way of public vengeance by imprisoning his wife and her pretended lover he shall, after a long intervening time, slaughter her and her parents so brutally?

It should be added, for increasing his penalty,⁵⁰⁷ that as regards the unfortunate parents there was no just cause for killing them unless he wishes to consider as such the lawsuit⁵⁰⁸ which they brought for the nullification of the dowry contract because of the detection of her pretended birth. But this cause rather increases⁵⁰⁹ the offense to the most atrocious crime of *laesa majestas*,⁵¹⁰ because of the utter security which the Pontifical Majesty wishes to afford to all litigants in the City. This point is found in the well-known decree of Alexander VI where we read: "The inhumanity and savagery which thirsts for the death of others is horrible and detestable," and in the end we read: "In offense of the jurisdiction of his Divine Majesty, and to the injury of the Apostolic Authority." And, "They incur *ipso facto* the sentence of the crime of *laesa majestas*." And a little later: "And they may always be distrusted [lxxix] in all their good deeds by every one, and may be held as banditti and as infamous and unfit."

Very worthy of consideration, also, is that other aggravation of this inhuman slaughter, namely, that it was committed in their own home,⁵¹¹ which ought to be for each person the safest of refuges, according to the text. [Citations.] And Cicero elegantly says: "What is more sacred, what is more guarded by all religious feeling, than the home of each of our Citizens! Here are our altars, here are our hearths, here are our household gods, and here the sacred ceremonies of our religion are contained. This refuge is so sacred to all that it would be base for anyone to be snatched hence." Much more is this true as regards the wretched wife, who was held in that place as a prison,⁵¹² with the approval also of the Abate Franceschini.⁵¹³ And hence the public safe-

keeping may be said to be violated thereby, and the majesty of the Prince wounded,⁴²⁰ since the same reasoning is observed as regards a true and formal prison, and a prison assigned by the Prince, as the following assert. [Citations.]

Finally we should also consider the aggravation of "prohibited arms,"⁴²¹ with which the crime was committed. This of itself demands the death penalty, even though the principal crime should otherwise be punished more mildly, as Sanfelici advises, stating that it was so adjudged. [Citation.]

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc and of the Apostolic Chamber.

[lxxx] [File-title of Pamphlet 6.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case with qualifying circumstance.

*For the Fisc, against
Count Guido Franceschini and his Associates.*

*Memorial of the law in the case by the Advocate
of the Fisc.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

SUMMARY.

[Pamphlet 7.]

My most Illustrious and Dearly Beloved Master:

No. I.¹³⁸
 Letter of the Honorable
 Marzi-Medici, Governor of
 Arezzo.

Your favored letter of the twenty-fourth of last month has reached me, and I am exceedingly sorry for the uneasiness in which you hint you are placed by the maledictions which Signor Pietro Comparini and his wife have disseminated ¹⁰⁹ throughout Rome, concerning the ill-treatment they say they suffered in your home while staying in Arezzo. As your letter questions me for true information, I answer with all frankness, that both among the noble connection and in Count Guido's home they were treated with all respect and decorum. The cause of the first disturbance ⁹⁵ which sprang up between them and your mother and brothers was that Signora Violante,⁹⁶ a few days after her arrival, presumed to domineer over the house and to keep the keys of everything, and in fact to turn out of house and home Signora Beatrice, your mother. With good reason, neither of the brothers was willing to consent thereto, and this gave occasion for the first insults and domestic broils. These afterwards increased when they saw that Signor Pietro ⁹⁷ had given over the company and conversation of the best people of the city, and had struck up acquaintance with the most vulgar. And with them he began to frequent daily all the taverns there. This cast discredit upon him, and was little for the good name of the Franceschini. Of much greater scandal were the many ¹⁴⁰ flights and petitions made by Guido's wife, their daughter, to Monsignor the Bishop.¹³⁹ These were made for no other reason than that neither she nor her parents wished to stay any longer in Arezzo, but desired to return to Rome. When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage.¹⁴² It is true that ever since the Comparini left this City until the present time the Signora has conducted herself with much modesty and prudence. From this fact everyone infers that the poor child was led to such excesses by her parents, as she herself declares to everybody. Now she detests even the memory of them. Therefore, she is getting back into the good opinion of everyone, and especially of those ladies of the city who had ceased having anything to do with her. Finally these same Comparini had taken away all her jewelry from the Signora, which I forced ¹³⁷ them to [lxxxii] restore. Altogether, such and so great are the scandals to which they have given rise before the whole city in the lapse of the few months they have stayed here, that I write you only a few of them. I assure you that with them your brothers have

had the patience of martyrs. Accordingly when I saw that they had become incorrigible, and were the talk of the town, and that they might force your brothers to commit some excess against them, for the maintenance of good discipline, I availed myself of the authority vested in me by His Serene Highness, and threatened¹³⁷ them with prison and punishment unless they behaved themselves. After these threats, which they evidently merited and which might have overtaken them, they decided to go to Rome,¹⁰⁰ as they did a little later, leaving behind them in this city a very bad reputation.

As for the rest, there is now in your home an utter quietude, and the Signora lives with exemplary prudence, detesting the ill example she had shown the ladies of this city, and she confesses freely that it was so commanded by her parents. In my judgment, it is the hand of God that has freed your family from such turbid heads. This is all I can here put down, out of much else there is to say about it. Therefore rest at ease, and believe me that the discredit has been entirely their own. I need only sign myself, with all my heart, to your most illustrious self,

Your most devoted and obliged servant,

VINCENZO MARZI-MEDICI.¹³⁸

To Signor Abate Paolo Franceschini, Rome.

Arezzo, August 2, 1694.

No. 2.
Deposition of
Francesca.

I will tell your Excellency why I have fled from the home of my husband. Here in Rome, three years ago, I was married by my father and mother to the said Franceschini, and after I was engaged to him I stayed here in Rome for two months without consummating the marriage.⁸⁹ Then with my father and my mother I was taken by my husband to Arezzo,⁹⁴ because in the marriage contract⁹³ it was agreed that my father and mother should go and live in Arezzo, as they did. After they had remained [lxxxiii] there four months,⁹⁸ they departed and returned to Rome,¹⁰⁰ because of the ill-treatment they suffered, at the hands not only of my husband, but of the others in his house.

I was left behind in Arezzo, and when about a year had passed after the consummation of the marriage, as I did not become pregnant,¹¹⁶ my husband and my mother-in-law Beatrice,⁴⁹ began to turn against me because I had no children. He said that because of me their house would die out and that he could not hope for an heir by me after a while; for by chance he had heard my father say that during a girlhood sickness certain seeds had been given to me as medicine, which possibly hindered me from having children. For that reason I came to be con-

tinually mistreated by my husband and mother-in-law,¹²⁹ though I answered that I was not to blame for that. Yet they continued always to threaten my life and, without any real occasion, they sought every pretext to maltreat me.

Then my husband began to be jealous¹²⁹ of me and forbade me to show my face at the window.¹²⁴ And to remove that occasion of jealousy I never showed my face save when it was absolutely necessary.¹²⁶ So one day, while we were on the balcony, he said to me that I was staying up there to make love, without telling me with whom. I replied that these were mere pretexts, and that from that place one could see only the street, without looking into the windows of the houses; for the balcony was only as high as our heads.

And then because the Canon Caponsacchi,¹²⁸ with other young men of the place, used to pass before our house¹⁵² and stop to talk with certain hussies,³² who were standing there in front, my husband began to fume with anger at me because the said Canon kept passing there as above,¹⁵¹ although I was not at all to blame. His suspicion increased all the more because, while we were in a great crowd at the play¹³¹ one evening, Canon Conti,³⁵ the brother of the husband of my sister-in-law, threw me some confetti. My husband, who was near me, took offense at it—not against Conti, but against Caponsacchi, who was sitting by the side of the said Conti. Then because Conti frequented our house, as a relative,³⁵ my husband took offense at him likewise; and this so much so that I, being aware of it, retired to my room¹²⁷ whenever he came to our house, that I might not have to take even more trouble; [lxxxiv]

A.

She tells of her husband's threats because of her ardor for her lover.

but my husband was not thereby appeased, but said that I did this as a trick, and that his suspicions of me were not removed. He began anew to torment me so, on account of Caponsacchi, that I was reduced to desperation and did not know what to say. Then

to remove that occasion for his ill-treatment, I spoke to the said Caponsacchi¹⁵⁶ one day as he was passing our house and begged him not to pass that way,¹²⁹ that he might relieve me from all the distress I suffered at the hands of my husband on that account. He replied that he did not know whence my husband had drawn such a suspicion, as he used to pass along there on other affairs, and that, in short, Guido could not stop his passing along the street.¹³⁰ And although he promised me not to pass along there, he continued to do so. But I did not show my face at the window. Yet with all this my husband was not appeased, but continued to maltreat me and to threaten my life, and he said that he wished to kill me.¹²⁵

At the time of the affair of the play told above, as soon as we had returned home, he pointed a pistol at my breast saying:¹³² "Oh

Christ! What hinders me from laying you out here? Let Caponsacchi look to it well, if you do not wish me to do so, and to kill you."

Furthermore, at the beginning of these troubles I went twice¹⁴⁰ to Monsignor the Bishop,¹³⁹ because he might have remedied it in some way; but this did no good, because of his relation with the house of my husband. And so as I was a stranger in that city and did not know how to free myself from these perils and abuses, and as I feared that if Guido did not slay me with weapons he might poison¹³⁸ me, I planned to run away and go back to Rome to my father and mother. But as I did not know how to accomplish this, I went about a month later to confession to an Augustinian Father,¹⁴⁴ whom they call Romano. I told him all my distresses, imploring him to write to my father in my name,

B.
She lies asserting
that she does not
know how to write.

as I do not know how to write, and to tell him that I was desperate, and that I must part from my husband and go to him in Rome. But I had no response.

Therefore, not knowing to whom I might turn to accomplish my desire, and thinking that no one in the place would assist me, because of their relationship or friendship to my husband, I finally resolved to speak of it to the said Caponsacchi,¹⁴⁹ because I had heard said that he

C.
She confesses the
strength and audacity
of her lover.

D.
She confesses a
conversation with
her lover.

was a resolute man. Accordingly, as he was passing one day before our house, at a time when my husband was out of the city, I called him¹⁷⁹ [lxxxv] and spoke to him from the stairs. I told him of the peril in which I found myself on his account, and begged him to bring me here to Rome, to my father and mother. He replied, however, that he did not wish to meddle at all in such an affair,¹⁸² as it would be thought ill of

by the whole city, and all the more so as he was a friend of the house of my husband. But I implored him so much and told him it was the duty of a Christian¹⁷⁹ to free from death a poor foreign woman. At last I induced him to promise me that he would accompany me as above. Then he told me he would secure the carriage, and when that had been arranged he would give me a signal by letting his handkerchief¹⁸³ fall in passing before our house, as he had done before. But the next day went by,¹⁸¹ and although I stood at the blinds he did not give the signal. When the day following had also passed, I spoke to him again as above, and complained to him that he had broken the word he had given me.¹⁸¹

E.
She confesses a
new conversation
with her lover.

And he excused himself, saying that he had not found a carriage in Arezzo. I answered him that, at any rate, he should have procured one from outside, as he had promised to do. Then the last Sunday of the past month,¹⁸⁴ he went by our house again and made the signal with the handkerchief, as he had promised. And so I went

to bed with my husband that evening, and when I had assured myself that he was asleep¹⁸⁶ I arose from bed and clothed myself. I took some little things¹⁹⁹ of my own, a little box with many trifles inside, and some money, I know not how much there was, from the strong-box.¹⁹⁸ These were, moreover, my own, as is evident from the list of things and moneys made by the treasurer of Castelnuovo. Then I went downstairs at dawn,¹⁹⁸ where I found Caponsacchi, and we went together to the Porta San Spirito. Outside of it stood a carriage with two horses and a driver,¹⁹² and when we had both entered the carriage we

F.

The lie about the arrival at Castelnuovo.

G.

The lover is not a relative of her husband.

H.

New lies, that she did not receive letters from her lover, and that she does not know how to write.²³⁵

I.

Another lie, that she did not send letters to her lover.

K.

She does not know how to write, and her husband had traced the letter.⁴⁶⁶

journeyed toward Rome, traveling night and day¹⁹⁴ without stopping until we reached Castelnuovo, except for them to take refreshment and to change the horses. We arrived at dawn,²¹² and were there overtaken by my husband as I have told heretofore to your Honor. The said Caponsacchi is not related in any degree to my husband, but was certainly a friend.

The said Caponsacchi, before the said affair, did not [lxxxvi] send me any letter,¹⁶⁰ because I do not know how to read manuscript, and do not know how to write.

Before the said affair, I did not at all send a letter of any sort to the said Caponsacchi.²⁵¹

When again put under oath, she responded: While I was in Arezzo, I wrote at the instance of my husband to Abate Franceschini, my brother-in-law here in Rome. But as I did not know how to write,²³⁵ my husband wrote the letter with a pencil and then made me trace it with a pen and ink it.¹¹⁴ And he told me that his brother had much pleasure in receiving such a letter of mine, which had been written with my own hand. And he did this two or three times.

If your Honor should cause me to see one of the letters written by me as above, and sent to Abate Franceschini, I should clearly recognize it.

And when it was shown, etc., she responded: "I have seen and carefully examined the letter shown me by the order of your Honor, which begins—*Carissimo Sig. Cognato, sono con questa*—and ends *Francesca Comparini ne Franceschini*, and having examined it, it seems to me, but I can not swear to it as the truth, that it is one of the letters written by me to Abate Franceschini, my brother-in-law, in conformity to my husband's wishes, etc.

And after a few intervening matters, etc., when questioned, etc., she replied: "I have never sent letters of any sort by the said Maria to anyone."¹⁶⁴

L.

Another lie about
the arrival at the
tavern of Castel-
nuovo.

M.

New lies that she
did not lie down to
sleep at the Inn of
Castelnuovo.

In all truth, I arrived at Castelnuovo at the blush
of dawn.²¹²

We shut ourselves in there at the tavern of Castel-
nuovo for the space of more than an hour.²¹⁵ During
that time we stayed in a room upstairs.²¹⁶

And after a few other matters, when questioned,
she replied: "I did not go to sleep, nor lie down to
rest in the tavern at Castelnuovo during the time I
stopped there, as above."

I know that your Honor tells me that the authorities pretend further
that I slept all night in the abovesaid tavern of Castelnuovo in an
upstairs room, in which Canon Caponsacchi also slept. And I say and
respond that no one can truly say so, because I did not rest at all in the
said tavern, and stopped there only for the time stated above.

[lxxxvii] [The letter of Pompilia to Abate Franceschini occurs also on
page lvi, and is translated on p. 44.]

[lxxxviii] Outside to Abate Paolo Franceschini, Rome: but inside:

My very dear Sir and Brother:

No. 4.
A letter of Fran-
cesca written to
Abate Franceschini.

I have received the fan which you sent, which
has been most welcome to me. I accept it with
pleasure and thank you for it. It displeases me that,
without reason, my parents tear our house to tatters. I for my part am
well and am happy in not having them now to stir me to evil. I wish
well to all our house, in the sacred fear of God. In fact you may well
laugh at the maledictions of my parents. Command me, who reverence
you from the bottom of my heart. Arezzo, July 19, 1694,

Your deeply obliged servant and sister-in-law,
FRANCESCA COMPARINI FRANCESCHINI.

No. 5.²¹⁴
The examination
of Canon Capon-
sacchi.

I had to go to Rome on my own business,¹⁵³ and as
I told my secret to Giovanni Battista Conti,⁵⁵ a rela-
tive of Franceschini, who frequented the home of the
latter, Francesca might have learned about it from
the same Canon, although there was talk about town of my coming to
Rome, which was to follow soon. Hence a letter,¹⁵⁴ sent to me by the
said Francesca, was brought one day by a certain Maria,⁵⁴ then a servant

of the Franceschini. In it she told me that she had heard of my going to Rome and that, as her husband wished to kill her, she had resolved to go to Rome to her father; and not knowing with whom she might intrust herself, she asked me to do her the service of accompanying her as above. I answered her that I was unwilling to do anything of that kind,¹⁶⁰ or to expose myself to such a risk;¹⁶² and I sent her a reply by the same servant. I do not remember the precise time that she sent me the above letter. Thereafter, when I passed the house, she continued making the same request to me,¹⁶⁷ by flinging from time to time from the window a note that repeated the request. And I replied to her, sending the response by the same servant, and telling her that I did not care to involve myself in such affairs. And therefore she finally cast me another note from the window, which, as I learned, was seen by a working-woman living across the street, whose name I do not know, and she carried it to the husband. The same servant was then commissioned to tell me that there had been a great commotion in the house because of it, and that the sister of Guido, who had been married into the house of Conti,¹⁶⁵ had declared furthermore that that servant had carried the letter to me. She also told me that Guido said he was going to kill [lxxxix] his wife¹²⁵ in some way after a little while, and that he would also be avenged on me.¹⁶⁸ Accordingly, with this purpose, to free myself from every difficulty and danger, and also to save from death the said Francesca,¹⁸⁰ I resolved to leave for Rome and to accompany her thither, conducting her to her father. And so one evening—I do not remember the exact time—as I was passing their house I gave her a letter, which she drew up to the window with a string. In it I told her that to free her from death I would accompany her as above. Another evening she threw to me from the window a letter in which she renewed the above insistence, declaring to me that her husband was always threatening to kill her; she would therefore have to receive the favor of my company as above, of which I had spoken. And finally, the last Sunday of the past month of April,¹⁸⁴ while I was going by their house and she was standing at the window,¹⁷⁷ I told her that I had secured the carriage for early the following morning and that I would have it await her at the gate of San Clemente.¹⁹¹ Accordingly, at about one o'clock¹⁸⁷ in the morning, she came alone to the said gate. We entered the carriage and turned along outside of the city wall to go to the gate of San Spirito,¹⁹³ which is in the direction of Perugia. This carriage belonged to Agostino, tavern-keeper in Arezzo, and a driver, surnamed Venarino,²⁰⁵ the servant of the said Agostino, drove it. I had had him leave the city Sunday evening at the Ave Maria. Then we pursued our journey without stopping to spend the night anywhere,¹⁹⁴ and we paused only as it was necessary for refreshing ourselves and changing horses, until we reached Castelnuovo²¹⁰ on Tuesday evening, the last day of the said

month of April.²¹¹ Then because Francesca said that she was suffering some pain, and that she did not have the courage to pursue the journey further without rest,^{213 218} she cast herself, still clothed, upon a bed in a chamber there, and I, likewise clothed, placed myself on another bed in the same chamber.²¹⁵ I told the host to call us after three or four hours, for resuming our journey. But he did not call us, and the husband of the said Francesca arrived in the meantime, and had both of us arrested²²² by the authorities, and from there we were taken to Rome.²⁵⁵

I have not spoken in Arezzo to Francesca at other times than those I have recounted above to yourselves.¹⁷⁸

The husband of the said Francesca is not related to me in any degree whatsoever.

E. The lover is not related to Count Guido. [xc] I have no profession at all, but am a Canon of the Pieve, of Santa Maria of Arezzo,²⁷ and am merely a subdeacon.

When I was imprisoned at Castelnuovo, certain moneys, rings, and other matters were found, of which a memorandum was made by the authorities.

I have never written any letter to the said Francesca, except as stated by me above.

The letters sent to me as above by the said Francesca were burned²⁴⁶ by me in Arezzo.

Although in the prison of Castelnuovo, where I was placed, a diligent search was made by the authorities and also by the husband²³⁰ of the said Francesca, nothing at all was found there.

The said Francesca when leaving Arezzo carried with her a bundle of her own clothing and a box, in which she said there were some trinkets,¹⁹⁹ but I did not see them. And she had it in a handkerchief with certain coins, which were then described at Castelnuovo by the Treasurer.

I do not know precisely by whom the letters²⁴⁵ sent to me by the said Francesca were written,²⁴⁵ but I suppose that they may have been written by her, but I do not know whether she knows how to write.

In the chamber²¹⁵ of the inn at Castelnuovo where we stopped, as I said in my other examination, there were two beds. Only one of these was provided with sheets by the chambermaid of the tavern, that it might serve for Signora Francesca. I did not have sheets placed on the other, because I did not care to undress myself. Nor did she undress herself, as I said in my other examination.

If I should see one of the letters written by me to Signora Francesca, I would know it very well.

I have seen and I do see very carefully these two letters which have been offered as evidence in this suit and have been shown to me by the

order of your Honor. One [cf. p. xcviij] of them begins *Adorata mia Signora, vorrei sapere*, etc., and ends *mi ha detto il Conti*. Having well considered this letter, I declare that it was not written by me, though the handwriting of the same has some resemblance to my own.²⁴⁴ I have also seen the other letter [cf. p. xcviij], which begins *Amatissima mia Signora, Ricevo*, etc., and ends *questa mia*, and having well examined it I say that the same was not [xci] at all written by me, and is not in my handwriting.²⁴⁴ Furthermore, it has not the slightest resemblance to my handwriting.

I have never spoken in Arezzo to Signora Francesca, except when I spoke to her at the window,¹⁷⁷ as I said in my other examination.

I have never received other letters²⁴² from the said Signora Francesca concerning other matters than her flight to Rome, as I have said in my other examinations.

I marvel that the Fisc pretends that, before the flight, several other love letters²⁴³ had been sent to me by the said Signora Francesca;¹⁵⁷ for she was a modest young woman and such actions would be out of keeping with her station and her birth. And therefore I declare that the abovesaid pretense is false and without foundation.

I turn back to say to your Honor that in the prison²⁸¹ of Castelnuovo there was not found by the authorities anything whatsoever. And if your honor tells me that certain love letters were found, which the Fisc pretends are those sent me by Signora Francesca, I say and respond that it is not at all true.

Outside: To the Most Illustrious and Most Respected Signor Paolo Franceschini, Rome.

And inside:

My Most Illustrious and Respected Signor:

No. 6.¹⁴⁸
Letter of the most Reverend Bishop of Arezzo.

I understand why you desire to tell me about the quarrels⁹⁵ which have arisen between Signor Guido, your brother, and Signor Comparini. And I can not but pity you for the trouble you have had in a case so rare, and indeed so unprecedented. The Signora, your sister-in-law, had some recourse to me,^{140 189} but her great excitement, taken along with the excessive passion of her mother, revealed to me that the daughter had taken this step entirely by mere instigation. So I tried to make peace between them, thinking that when the instigations of the parents were removed she might be brought to right reason. I believed

this the more readily, as she was of tender age. And the more she spoke, and the more she made outcry, that much the more had she been urged thereto by the instigation of her mother. And that she might not be excited even more, I had her taken home in my carriage twice.¹⁴² I have some knowledge of this because Signor Senator Marzi-Medici,¹³⁶ who presides over the laic government of this town for our Most Serene Grand Duke [xcii], has told me all. And I need only add that I reaffirm what I have written with entire sincerity. Wishing for new chances to serve you, I affirm myself

To you, Sir,

Your Most Obedient Servant,

THE RIGHT REVEREND BISHOP OF AREZZO.

Arezzo, September 15, 1694.

My dear Sir:

No. 7.²³²
Reciprocal love
letters.

I do not multiply my assertions for the purpose of proving my love to you, because my resolution and your desert is enough proof of it. My affection no longer has any rein, etc. May grace be to him who gives grace.

My own Signor:

I tell you, do not be surprised if my mother was at the window, because she was looking at the one who was setting the sofa in order. And therefore you can pass here without fear. When more at my leisure, I will write you some fine matters, etc. When they tell me anything, I will advise you of it.

My Adored Mirtillo,¹⁶² My own Life:

I pray you pardon me that I did not look at you yesterday when I was at the Cappuccini, because I saw that the two were watching to see if I would look at you. Therefore I suffered much pain in not being able to look at my Sun. But I saw mine own with my heart, in which I have you engraved. I remain as I am and shall be

Your devoted servant and faithful sweetheart,

AMARILLIS.¹⁶³

My well-beloved:

I have received your letter, which has given me much pain, etc., that the Jealous One²³⁹ might have seen the letters. And he did see them, but did not open them, because they were tied up together, and he

supposed that they were other letters, and did not take them into his hand. [xciii] This fellow is telling it because he would like you to get angry with me, etc. You ask me if I am of the same thought, and I tell you yes. If you have not changed, I am ready to do what I have told you, etc. Then soon, if they continue to drink red wine,²⁴⁰ I will tell you so. Whether you are of the same mind still, or have repented of it, I am content to do what you wish, etc. I remain as I have been

YOUR FAITHFUL SWEETHEART.

Most beloved Signor:

I do not know why you did not pass here yesterday evening; for I took my stand at the window and saw no one. I forsook the window because the Canon, my brother, was there. I left there to go to the other windows lest he might see me, etc. But you turned toward the door of your sweetheart, because there is the one adored by you. Conti has asked me for those octaves,²⁵³ which you gave me, etc. Therefore tell me if I must give them to him or still keep the precious verses for myself. And I remain as I am and shall be

Your faithful, yes, your most faithful Sweetheart,
AMARILLIS.¹⁶³

I forgot to tell you that the Signora my mother no longer has the fever, and is drinking wine, but by herself. Her wine, however, is red like ours.²⁴⁰ Therefore tell me what to do, that I may do it. I close with sending you a million kisses. But I know that in this way they are not so dear as a few would be if you would give them to me. But those of the Singer³³ are very dear to you, though I tell you that they are poisoned, etc. Be the scrupulous one with others that you have been with me. For you have reason for this with others, but you have no occasion for it with me, etc.

Most Cherished Narcissus:

This evening I received your letter, and it gives me great comfort to know that you are not angry, etc. I do not know when he will give it to me, but if he gives it to me I will give it to you. The Jealous One^{237 239} is away,¹⁵⁹ but I shall still be here, and all the rest; but because my mother has not found a servant, etc., they have said that they will stay here a while. Therefore you will not pass [?] out of my mind because of my not seeing you for a while. But whoever loves [xciv] from so good a heart as I do, will keep one in mind. I pray you pardon me if I make myself tedious by writing too often. Acknowledging myself as I am, I remain

YOUR DEVOTED SERVANT AND MOST FAITHFUL SWEETHEART.

Most beloved Signor:

If you could imagine with what haste I have written to you these two verses,²⁵³ etc. I met Signor Doctor, as usual. He asked me where I was going, and along the street he asked me why I had written scornfully to him. I told him that he deserved even worse, because he had given evil deeds and good words; for he had said he was fond of me and that he wished him and the rest of them in Sovara, etc. He replied it did not come from this one, but on account of another gentleman whom I used to like, who was more gallant than he. I answered him that if that one was not more gallant than himself, he was at least more faithful, etc. Professing myself, as I have ever been faithful, etc.

My Adored and Revered Signor:

I wish by this letter of mine to excuse myself from my error in sealing the letter which I sent to Rome, etc. I tell you that they have not found any letter at all of mine, because I do not let them lie around the house, but give them to the flames.²⁴⁶ And while I keep them, I place them in my bosom. This is not an excuse, why you should surmise [it to be] one of my letters; for I tell you that I give it place in my bosom, etc. Inasmuch as one of the family may be behind the curtain, as I believe, do not make any signal when you are under the windows. I shall be at the window this evening, or else at the blinds, and when I shall see you I will show myself at the window. But it is necessary to be prudent, that he may not see me. Because he has told me that if he sees me he will wish to do such things as not even *Aeneas*, the Trojan, did. To avoid arousing his suspicion I will not stay there. But I pledge myself

YOUR MOST DEVOTED SERVANT.

My Longed-for Blessing:

If your saying that I do not love you, because you do not know me, is not an error, it is at least displeasing to me. Hear me, my dear: I am offended with you, because either you consider me blind or you do not consider me amiable. You can not say of a truth that I do not love you, nor can you say truly that any one does love as much as I love you. Look into my eyes, and you will be astonished; for when bright with my tears they will be faithful mirrors to reveal to you that your face is copied there (in which an outline of it is made in the Sun), that your whiteness is snow in comparison with the Milky Way, that the Graces have directed your movements by their own hand, that Venus in fashioning you took the measure of your limbs with her own girdle. Ah yes, I love you so much that in one respect I would wish alone to love you in the world, because it seems to me that I could love you for all in central

Latum. I should like that all might love you, because you would see that all of them put together can not love you as much as I alone do. My breast is envied by every other part of me, because it alone is able to love you. These are matters one can not know by mere hearing; they are matters to render one excusable to any one else who does not believe it. But you are a cruel beauty; for if you see a face composed by the miracles of angels you should not consider it a lie if a heart is found fashioned by the miracles of love, etc. I leave you a thousand thousand kisses.

My well-beloved:

I pass by compliments, because I can not match your very gallant verses,²⁵⁸ which are so far different from what I merit. You tell me that you wish to know what has happened in our house. I tell you that nothing has happened, so far as I can see, because none of them have said anything to me—none of them. But Signor Guido seems rather well disposed toward me than otherwise, and therefore I can not find out whether they are angry with me. Let my brother-in-law lock the door; he does it often, etc. If you do not wish to pass by here any more, I leave that to your own judgment, and I will suffer quietly the pains which are pleasing to you. Therefore I tell you that you may do as you wish. For as gold is refined in the fire [xcvi], so love is refined by suffering. I can well say that I shall suffer pain at not seeing you as I have been accustomed, etc. With a loving kiss, I remain as I have ever been, your most sincere sweetheart and your most faithful slave.

I had quite forgotten to tell you that I stay in the same room as at first, and that Thursday evening I went to bed at eight o'clock, and so you did not hear me enter the room. I told the servant that she should make the signals agreed upon, etc.

Signor Guido returns Saturday^{169 257} morning and you may pass this evening at ten o'clock or sooner, when you shall see the light in the room, etc.

My well-beloved:

I received your letter, which was most pleasing to me, as are all the rest you have sent me, etc. I see that you like the Pastor Fido. But I would wish you to imitate him, and I will imitate another Vienna. I hear from her that you will want to come to see me at the Villa, etc. If I could only bring it about, I would more willingly be your wife than your servant. You tell me that Conti is unwilling to bring any more letters for you. But let me inform you that I am wheedling him, and I have the wits to bring it about that he will carry them to you; because I say two kind words to him and he is charmed and will do what I

wish. You tell me that I shall let a cord down through the lattice, but you do not tell me what evening, etc. But I tell you that the Jealous One²³⁰ has gone to Sovara, if I might speak to you. But the Confessor is utterly unwilling, and for that reason I do not have you come here, because now the street door is no longer opened, but you might be able to open the back door,²³¹ etc. But that Frate⁶¹ does not wish it, and you do not. I thank you for the kisses you send me, but if you yourself could give them to me, I would hold them dear. And I give you others in reply, as many millions as you have given to me.

YOUR MOST FAITHFUL SWEETHEART.

I do not know what name to give myself, whether Vienna, or Amarillis or Dorinda, or Lilla, but I wish to call myself Ariadne, for I believe I have had to be such. I wish to call myself such, only so you are not a Theseus, but a chaste Joseph, or a dear Narcissus, or an Ilago, or a Fedone. Adonis indeed took pity on Venus, but I am none such, but even a Medusa. Therefore I deserve, etc. If you have read Tasso, you will know who this was, etc.

[xvii] My Beloved Idol:¹⁶¹

I know of the affairs which have happened to you. I do not take it in bad part when you tell me that it is not possible to make my mother sleep, while she is ill and drinks no wine,²³² and therefore can not sleep. It may be in the next few days that she will get well. Then I will inform you of it, etc.

Your faithful Sweetheart,
AMARILLIS.¹⁶³

My Adored, Beloved, and Revered Heart:

I am confused at such praise, etc. You write to me oftener than you might about the Doctor. You offend me by saying that I will love him again. I tell you as sure as the Sun shall rise upon this world, I have not the heart for another such blow. But he who does ill, thinks ill, etc. As to what you wish to know about the wine, I tell you that it is red²⁴⁰ now, but I do not know how much longer it will be so, but I will let you know about it. Sending you a thousand and a thousand, and a million of kisses, I remain, etc.

Come this evening at seven o'clock,¹⁶⁵ because I wish to speak to you, and cough when you are under the window.

AMARILLIS.¹⁶³

She¹⁶⁴ is bursting because she can not say, as you tell me here, that she is white as milk, and that you are darker²³⁶ than I.¹⁷ If I had been you,

I might have called you ivory, as I do call you. Watch this evening lest it be the Jealous One,²³⁰ and not myself. Therefore I will cough, and if you do not hear me cough, do not move.

I let you know that Signor Guido is going out of the city,¹⁶⁶ and will be gone several days. Therefore I pray you come this evening about seven o'clock.¹⁶⁶ And when you are under the window, cough and wait a little while, that I may not make a mistake. He goes away Monday morning, etc.

My Dearest and Most Deserving Well-beloved:

I give the infinite thanks of Rosalinda, etc. I wish you to know that he makes me signals along the Via del Poggio, etc., and not because I wish to make proof of your love, which I know very well. You are as constant as myself, and therefore I do not wish to make these proofs, etc. So that you can not say that I no longer love you, because all my good wishes for Signor Guido are turned to you, who deserve it.

AMARILLIS.

[xviii] My adored Signora:

I wish to know whether you can leave Sunday evening, that is, to-morrow evening, for if you do not go away to-morrow evening, God knows when you shall be able to do so, because of the scarcity of carriages, owing to the fact that on Wednesday the Letter of the lover. Bishop¹⁷⁶ departs with three carriages. Therefore, if you can go, as soon as you have read this letter of mine, return to the window and throw it to me as a sign that I may reserve a carriage beforehand, which may be secured from some one or other. If I secure the carriage to-morrow, in passing along there I will let fall my handkerchief¹⁸³ one time only. Then for the rest, to-morrow evening I will wait from eight o'clock in the evening on as long as necessary. And as soon as you see that they are sound asleep, open the door for me, that I may help you make up your bundles and collect the money. Above all, try to put some into all their cups, and do not yourself drink it.²³⁸ And if by ill luck they shall find it out, and shall threaten you with death, open indeed the door, that I may die with you or free you from their hands. And praying God that he will make this design of ours turn out well, I declare myself as ever.

Your Most Faithful Servant and Lover
MIRILLO.¹⁶²

It is a very bad sign that the Jealous One²³⁰ seems pacified, and that he has said that you were at the window. Because he will wish to find out in that way what you are doing at the window, and for what purpose

you are there. For Conti³⁵ has told me that now he is more jealous than at first, and that if he finds out about anything he will wish to avenge himself by putting us to death. He wishes to do the same to me, and that is what will happen. Here then has come at last the breaking of the chord.

Most Beloved Signora :

I have received your note full of those expressions (and then loving words follow). Be pleased to receive me into your bosom, in which I rest all my affections, etc. Consign to the ashes this note of mine.²⁴⁶

My Revered Signor:

Driven by the affection which I feel for you,
Another letter of Francesca. I am forced to contradict what I sent you yesterday evening in that letter when I said I did not wish to tell you to come here. If you did not tell me then, I tell you now that I would wish you to come here this [xcix] evening at the same hour as day before yesterday evening. I have indeed thought that towers are not moved by such light blows. But if you do [not?] wish to come here (that there may be no occasion for you to break your promise to some beloved lady or even though it may not be inconvenient), I do not wish to be the cause. Therefore if you wish to come here, pass along as soon as you have read this, etc.

No. 8.
 Decree of banishment of the lover.²⁷¹ TUESDAY, September 24, 1697.
 Giuseppe Maria Caponsacchi,²⁶ of Arezzo, for complicity in flight and running away of Francesca Comparini, and for carnal knowledge of the same, has been banished for three years to Civita Vecchia.

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case.

*For Count Guido Franceschini
and his Associates, Prisoners.*

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Romana Homicidiorum.

[Pamphlet 8.]

Most Illustrious and most Reverend Lord Governor:

The confession of Count Guido and his fellows as to the murder of Francesca, his wife, and of Pietro and Violante Comparini, his father-in-law and mother-in-law, falls far short of supporting the Fisc in demanding the ordinary death penalty. But, rather, it is remarkably in our favor in excluding that penalty. For there is no longer any doubt as to the cause of the murders, namely *causa honoris*. This at first was denied by the Fisc because of the presence of other causes, though these either were insufficient or were indirectly hurtful to the sense of honor. We will go over them hereafter, not "with unwashed hands." For a confession indeed should be received along with all its details, and is not to be divided according to a preconceived purpose. [Citations.]

This cause alone would be ground enough for demanding that he and his fellows be dealt with more mildly, if we bear in mind that *causa honoris* is quite sufficient for the moderating of this penalty. For we have proved in our other argument that a husband may kill his adulterous wife, even after an interval, without incurring the death penalty, wherever the adultery is really proved, as the Advocate of the Fisc concedes in his response. § *Solamque suspicionem*. [Cf. p. cxcvii.]

And in very truth, we have in our other plea adduced a great many decisions of the highest courts, wherefrom it is evident that the penalty has been diminished for husbands who have had their wives killed even by means of an assassin; and, on the contrary, no decision favorable to the Fisc is cited. Such an opinion is therefore to be accepted more readily, inasmuch as it is sanctioned by the greater number of authorities. And even although Farinacci and Raynaldus seem to take the other side, yet Farinacci, in his *Questions*, shows himself very much in doubt, as I have shown in my other plea; and in cons. 141, he shows that he is very changeable, since in cons. 66, No. 5, he has proved the contrary. Therefore, when his attention was called to this changeableness, in excusing himself, he asserted, in the said cons. 141, under No. 16, that Beatrice, in behalf of whom he had written [cii] in cons. 66, had been beheaded; as if this kind of rigorous sentence should be followed in practice. And may this distinguished authority pardon me,⁵⁰⁷ but he responds inconsistently,⁵¹⁷ having forgotten what he had written in the end of cons. 66: that is, that Beatrice was put to death not because she, after an interval, had commanded that one be put to death who was plotting against her honor, but because she did not

prove her right to this latter exception, where he says: "So also there was strong hope for the sister Beatrice, if she had proved the excuse she offered, as she did not prove it."

But the Honorable Raynaldus, whose words and writings I venerate, in his *Observationes Criminales*, cap. 2, § 4, No. 156, after he asserts that some remission from the ordinary penalty may be hoped through the benignity of the Prince, does not decide the point by citing Gizzarellus and Giurba, who affirm that in justice the penalty should be decreased. But he goes back to what he had written, *cap. 7 in Rubrica sub No. 60*, where, however, he does not openly examine the point as to murder permitted for honor's sake. Otherwise he would go contrary to the general opinion of authorities, and to many decisions of the highest magistrates, that is to the common practice of the courts. [Citation.] "And this opinion is followed in practice, as I find in the event of such a fact the Neapolitan court has so decided." And concerning this same practice, Matthæus likewise bears witness. [Citation.]

Yet, as I have said, it would be enough to clear Guido of conviction if only his confession be taken in its entirety without subdivision. For greater completeness, however, we offer full proofs of the adultery, as brought out in the prosecution for the flight from home. The Fisc has attempted to attack these proofs lest he might have to lay down his arms; and the Achilles of his pretense is solely a preposterous cross-examination,¹¹⁰ which was not admitted into the suit for permanent record. It gives the word of a certain baseborn woman, formerly a servant in the home of the Accused, who was severely maltreated by Guido, by the Canon his brother, and by their mother. All too eagerly she narrates the ill-treatment suffered by Pietro and Violante, and by Francesca their daughter, and his wife, respectively, especially in the matter of their food, on account of which Pietro and Violante preferred to return to Rome. [Cf. pp. xlxi-lxxi.]

Yet Guido by a written agreement¹¹¹ had bound himself to furnish food to the abovesaid couple. And furthermore it is claimed that the flight of Pompilia also was necessary [ciii], because she was being threatened with death; in order that her own base desire of violating her matrimonial fidelity may not be deduced therefrom.

If, however, we have any regard for the truth, the domestic affairs of the Accused were not so pinched, because they were more than enough, not merely for frugal, but even for lavish living. The theft of the moneys¹¹² committed by Francesca in the act of flight demonstrates this. (See the prosecution for flight, pages 5, 63, and 92.)

The real and true cause¹¹³ which moved Pietro and his wife to go back to Rome was undoubtedly that the mother of Count Guido could not bear that the aforesaid Comparini should regulate family matters and should at their own pleasure dispose of everything looking toward

the government of the home;⁹⁶ this with greatest flagrancy and with none the less boldness they desired to do. Furthermore, Pietro took it ill that he was rebuked for leaving the company of the noble class and associating in taverns⁹⁷ with the commonest persons in town, to the scandal of well-born men. And still more because he was compelled by the Governor of the City, under fear of imprisonment, to restore certain trinkets and gems of his daughter,¹⁴⁷ which he had taken away, as Count Guido testified in his examination, pp. 96 and 97. And this is admirably proved by a letter of the same Governor recently presented by ourselves, which we give in Summary, No. 1. [Cf. pp. lxxxi-lxxxii.]

With these statements the cross-examination of the same Francesca, when arrested in her flight, agrees; in it we nowhere read that she was maltreated, nor that she ever complained of that home of decent poverty. And yet it is very probable that, to put a good face upon her flight, she would have alleged the domestic want and home miseries, if she had ever suffered them.

We do not deny that disputes immediately arose between Francesca and her husband, and possibly he threatened her with death. But this was for another reason, namely that she should quit the illicit amours¹²³ she had begun at the suggestion of her parents, and that she should live with evident chastity, as is to be read expressly in her deposition (our Summary, No. 2, letter A). [Cf. p. lxxxiv.]

It is verified from the fact that Francesca herself, in a letter¹¹² written to Abate Franceschini, ingenuously confesses (Summary of the Fisc, No. 4, and our Summary, No. 3) that her parents indeed were sowing strife between the couple and were urging her to have recourse to the Bishop¹³⁹ under the false pretense of ill-treatment; and day and night they kept instigating her to poison her husband, her brother, and mother-in-law, to burn the house [civ], and what is still more awful, to win a lover and return to Rome in his company. Nor did she fail to obey them in several of these matters.

And in another letter written to the same Abate, and shown by us, and given in our Summary, No. 4, we read: "Not now having those here who urge me to evil." [Cf. p. lxxxvii.]

Of no counter-effect is the response^{459 465} that the single characters of the said first letter had been previously marked out by Guido, and were afterward traced with a pen by herself,¹¹⁴ as she asserts in our Summary, No. 2, letter K. [Cf. p. lxxxvi.] For proof of this statement she can bring no other evidence than that she does not know how to write.²³⁵ Summary, No. 2, letters B, H, and K. [Cf. pp. lxxxiv-lxxxvi.]

In this, furthermore, she stands most clearly convicted of falsehood by her signature, which was recognized by herself at the command of the court while she was in prison, as we find in the prosecution for flight, p. 39. She also stands convicted of falsehood by the signature

of her marriage agreement, concerning the truth of which it would be ill to doubt, both because there is along with it the signature of one of the Lord Cardinals,²³⁰ and because her handwriting was recognized by herself who had written it, at the demand of the notary, as is to be seen in the copy filed in the prosecution for flight, p. 132. And furthermore she is convicted by the priest with whom she fled, who asserts that more than once at night he has received letters which were either thrown out of the window by her or were sent by a servant; we give his deposition in our Summary No. 5, letters A, B, C, and D. [Cf. pp. lxxxviii-lxxxix.] This is verified by the Fiscal witness, p. 108, where we read: "And she threw down a note, as I saw very clearly, and the Canon picked it up, and went away." There are, besides, the letters²³² and sheets of paper filled with mutual love, found in the prison²³¹ at Castelnuovo, where they themselves were overtaken. But it is utterly impossible that the characters of these were also marked by her husband, nor is it told by whom they were written; accordingly it is to be presumed that they were devised by herself, lest she might betray their forbidden love-intrigues, which they would have to hide with the greatest care. And I pray that the abovesaid letter be submitted to our eyes, and it will be clearly seen whether the characters were formed by one not knowing how to write, but forming them in ink in imitation of certain signs, or rather by the expert hand of the woman herself.

In the first place, the truth of the said letter of which we are speaking, we may gather from the letter of the Governor of Arezzo, in our Summary, No. 1 [cf. pp. lxxxi-lxxxii], where we find: "Of much greater scandal were the flights and petitions made by the said wife, their daughter [cv], to Monsignor the Bishop. These were made for no other reason than that neither she nor her parents wished to stay any longer in Arezzo, but desired to return to Rome. When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage."

And this is likewise expressly deducible from another letter²⁴² of the most reverend Bishop, which is given in the Summary, No. 6 [cf. p. xcii], where we read: "The more she made outcry, that much the more she had been urged thereto by the instigation of her mother." And after a few words: "I have some knowledge of this, because Senator Marzi-Medici, who presides over the secular government of this city for our Most Serene Grand Duke, has told me all."

It is verified still further by another letter of Signor Bartholomeo Albergotti, produced by the other side, which is given in the Summary of that side, No. 2, at the end. [Cf. p. liv.] But the letter is not given in its entirety, for, where it speaks of the Secretary of the Bishop urging Count Guido and his mother, we should read there: "Not to maltreat the Signora for the affront offered him. After disputes enough

of this kind, he took the Signora back home. And she declared that she was absolutely unwilling to live with Signora Beatrice and with the Canon Girolamo, her brother-in-law." And after a few other matters: "I pray yourself and Signora Violante to be willing to offer a remedy by instilling the wife with a tranquil peace, which will be for the quiet of all," as we read in page 190.

This is also proved by the letter of the Abate produced on the other side, p. 182, where we read: "By Signor Guido, my brother, several offers have been made to him, but have not been accepted; and they insist that we force our mother and the Signor Canon to leave the house. But this shall never be, even if there do not follow both love and concord. I will never advise that."

And from the letter of D. Romano, 188, later, where we read [cf. p. liv]: "I have known why she fled to Monsignor, and it was because she did not wish to live with the Canon and Beatrice," etc., which words are not noted in the Summary of the Fisc, No. 2.

See for yourselves, therefore, that Francesca was not maltreated, although she so deserved because of her eager and indecent recourse¹³⁹ without cause to the most reverend Bishop. Hence it is evident whether the Comparini left Arezzo and Francesca fled from home because of ill-treatment.

It remains now that we see—even granting this ill-treatment—what cause of fleeing from the home of her [evi] husband Francesca might have, or rather if her flight were not scandalous. This will not be difficult to make clear, if we will dwell for a little while upon the deposition of the same Francesca and upon the letters²³² found in the said prison of Castelnuovo. These latter were produced by the Fisc in the prosecution for flight, though they were not given recognition. The lack of this acceptance can not stand in our way, nor do I think it can be denied that they are of the same handwriting, if they are compared with the assured writing of the command of the court. Furthermore, as they contain love affairs, and the name of Guido himself, no sensible person will think that they were not written by them.

From her own deposition, it is evident that she was often abused for her sterility, and was terrified by threats of death on account of her love affairs with the said priest, as we see in the said Summary, No. 2, letter A. [Cf. p. lxxxiv.] Nor was the cautious husband deceived, since her love increased day by day, while her conjugal affection indeed decreased just as her feeling for her lover increased. In the said letters which are given in Summary, No. 7 [cf. pp. xcii-xcix], that priest is called: Beloved, Adored, Mirtillus, My Soul, Most Dearly Beloved, Narcissus, My Eagerly Craved Blessing, Dearest Idol; and she signs herself "Thy faithful Sweetheart," and "Amarillis." And conversely, she is called by her lover "My Adored Signora." And in the details of those letters

is expressed her intense love and the ardor with which that unfortunate one was burning for her lover, as is evident. Nor may I without shame refer to the very tender expressions of her love. But one of them, and possibly a second, I may not omit, that "from the claw, you may recognize the lion." Thus in letter 17, we read: "So that you can not say that I no longer love you; because all my good wishes for Signor Guido are turning toward you, who deserve it." And this possibly is the reason why she refused to lie with her husband, as the said letter of Signor Albergotti points out, where he says [cf. p. liv]: "The Signora has been melancholy, and two evenings after your departure she made a big disturbance, because she did not wish to go and sleep¹¹⁵ with Signor Guido, her husband, which displeases me very much."

In the first letter [we read]: "My affection no longer has any rein"; in the fourth: "I am ready to do what I have told you"; in the tenth: "I will suffer quietly the pains which are pleasing to you." And it would be a long task and a disgusting one, to tell them over singly. For she was unwilling to conform herself to the chaste manners of Arezzo, accustomed as she was to living a freer life. This may be read in the letter of Abate Franceschini produced by the other side, page 179, and following, where we read:

"These occasions for bitterness, which have arisen between yourselves and Signor Guido, I do not wish to examine. I know enough to say [cvii] that this has arisen from your wishing to turn the wife from what, according to the custom of the country, her husband both may and ought to do. Because over the wife God has given him authority, and likewise it is the general usage and the custom of the country. If yourself and Signor Pietro should stand in the way of this, you would do wrong, and it would be the duty of the husband to admonish his wife." And in another letter, p. 124, we read: "I can not persuade myself that my mother and brothers would conduct themselves in such a way as to force her to have such recourse." And after a few words we read: "And know well that what I have endeavored by my words to urge upon Signora Francesca, Signor Pietro, and yourself is only out of pure zeal for the honor of your house and of yourselves."

On the other hand, the same thing is to be drawn from the letter of the said priest, as we read in letter 20; "I have received your notes, full of those expressions [of love], etc. Be pleased to receive me into your bosom, in which I rest all my affections." And the letters which have reference to the flight, give clear proof of the mutual exchange of affection, as is well proved by the effect that followed. Thus, in letter 18, we read: "I wish to know whether you can leave Sunday evening, that is to-morrow evening; for if you do not go away to-morrow evening, God knows when you will go, because of the scarcity of carriages." And after a few intervening words: "As soon as you

see that they are sound asleep, open the door for me, so that I may help you make up your bundles and collect the money." And after a few more words: "Praying God that he will make this design of ours turn out well."

And letter 19 of the same lover, in which proofs of love are given by no means obscurely, also shows us of what quality those loves were, where we read: "That the Jealous One seems pacified, and that he has said you were at the window, is a very bad sign; because he will wish to find out in that way what you do at the window,¹⁷³ and for what purpose you are there. For [Conti] has told me that now he is more jealous than at first, and that if he finds out anything he will wish to avenge himself by putting you to death and will wish to find means to do the same to me."

It is proved still further that the wretched Accused complained bitterly that she was not content merely with a single lover at Arezzo, but that she has been defiled by many suitors,¹⁷⁴ so that she multiplied the disgraces to his house, page 98, and following. We also read clearly in the seventh letter:

"I met Signor Doctor, as usual. He asked me where I was going, and along the street he asked me why I had written scornfully to him. I told him that he deserved even worse, because he had given evil deeds and good words; for he had said he was fond of me, that he wished him and the rest of them 'in Sovara.'"

And in the thirteenth [cviii]:

"As to the Doctor, you offend me by saying that I will love him again. I tell you, as sure as the Sun shall rise, I have not the heart for another such blow."

It is therefore quite evident whether Francesca had an honest cause for leaving the home of her husband, or whether she was not rather impelled by the more urgent spurs of love. It may be said now that these letters were sent for a good purpose,¹⁷⁵ that the priest might be induced to accompany her so that she might shun the danger of death, since she found herself therein without any just cause. And it may be said that she could have kept her modesty uninjured in the company of her lover. But since without doubt the amorous expressions used in the letters do not show chastity of mind and a modest disposition, and as just cause for flight is lacking, the veil wherewith her viciousness tried to hide itself is destroyed. I acknowledge that Judith,¹⁷⁶ who was an entirely chaste widow, of decorous appearance and fine looking in many ways, made advances toward a very licentious enemy; but this was for the purpose of accomplishing a pious work, namely, to liberate her own native land. She was provided not with lascivious letters, but with earnest words, the unimpaired modesty of which it were evil to doubt, since she was moved by the breath of the Holy Spirit. But to-day,

how very few Judiths are found; yet the daughters of Lot are multiplied, who when they could not preserve their sense of shame even in their father's company made him drunken with wine, lest he, when sober, would deny them because they were sinning weakly, so that, when out of his own mind, he was involuntarily polluted with nefarious incest. (Genesis, chapter 29.) Do we believe that a girl who was dying for love, and who burned most ardently for the company of the loving Cupid and her lover, would keep safe her modesty during a long journey? Which modesty I only wish she had preserved in the home of her husband!

And even if Guido had imposed upon her, without due reason, a just fear of death, she should not therefore have increased his suspicion of base and lustful acquaintanceship by choosing as her companion in flight that priest whom her husband had suspected; for Caponsacchi was not at all related to herself or her husband, as each of them confesses in our Summary, No. 2, letter G [cf. p. lxxxv] and No. 5, letter E. [Cf. p. lxxxix.] Thus she would prove her dishonor. But while still guarding carefully her matronly shame, she might either have entered some monastery with the help of some church official, if she had used truth and not falsehoods; or she might have had recourse to the civil governor, who, after examining all things, would have afforded her a safe return to the City in company with honest men and women; or he might have placed her in the home of some honest matron [cix], with due safeguards. But even if she had no faith in either of these, and was determined to go back to Rome, she might at least have entered upon the journey with one of the servants.¹⁴⁸

Likewise, the other excuse for putting an honest face on the illicit amour falls to the ground—namely that concerning the aforesaid flight another priest,¹⁴⁹ the brother-in-law of the sister-in-law⁸⁵ of the said Francesca, was informed. For if the abovesaid letters are read through carefully, the suspicion of illicit correspondence with his connivance is very greatly increased. We read in letter 11:

“ You tell me that [Conti] is unwilling to bring letters for you. But let me inform you that I am wheedling him; and I have the wits to bring it about that he will carry them for you. Because I say two kind words to him, and he is charmed and will do what I wish.”

And in letter 19 of the lover:

“ For he has told me that now he is more jealous than at first, and that if he finds out about anything, he will wish to avenge himself.”

But who would judge that we can deduce from the said words that their mutual love was chaste, because another priest was aware of it. I know that for Francesca to show herself at the window at the hiss¹⁷³ of her lover in company with the other priest does not savor well. Of this a witness⁶⁴ for the Fisc, in the prosecution for flight, gives oath,

pp. 107-8. Therefore, not without cause did Count Guido have suspicion also of the other priest, as Francesca herself asserted in her deposition in our Summary, No. 2, before letter A. [Cf. p. lxxxiii.]

These [two] things are taken as proved therefore: [first] that it is not established that Francesca was threatened with death without just and legitimate cause, and [second] that a most suspicious correspondence with her lover is established. It will follow that the threats were offered by her husband to preserve his honor, and so it was in the power of Francesca to free herself from these threats without scandal, without flight, and without shame, by living chastely. She, however, was too prone to the tickling of the flesh, and had deferred all things to the fulfilling of her vicious desire, without respect to her violation of conjugal faith. It is all too foolish to doubt her utter recklessness, since it is manifestly evident from matters brought forward in the prosecution for flight, and especially from the reciprocal love between the lovers, etc. It is also clear from the letters containing such very tender expressions. [Citations.]

As to the entry and egress¹⁷⁰ of the said priest from the home of Francesca [ex] at a suspicious time, a witness^{64 171} for the prosecution testifies, p. 107: "At the sound of the Ave Maria, while I was at the same window, I saw the door of the said Signori Franceschini open very softly, and from it passed the said Signor, etc. He pulled the door to as he went out, but did not in fact close it, and therefrom, after a little while, I saw the said Signora Francesca Pompilia, with a light in her hand, who closed the said door." It is also proved from letter 11, where we read: "For that reason I do not have you come here, because now the street-door is no longer opened, but you might be able to open the back-door," etc. This of itself is enough to prove adultery, even when trial is being made to demand punishment therefor. [Citations.]

Her leaning from the window at a hiss,¹⁷³ day and night, and their mutual nods, concerning which a witness⁵⁴ testifies, p. 108, are quite enough to prove carnal communication. [Citations.]

Then there is the manner in which they prepared for the flight, which includes, as I may say, a show of treachery, as is to be understood from the letter of the priest, No. 18, where [we read]: "Above all, try to put some into all their cups, but do not yourself drink it." For in seeking an opportunity to mingle an opiate¹⁹⁶ for them,²⁴¹ he was inquiring what colored wine they were drinking in the home, lest, as I suppose, the color of it when altered by the drug mixed therewith might betray their plots. So in letter 4, where we read: "Then further, if they continue to drink the red wine I will tell you so." In No. 12: "When you tell me that it is not possible to make my mother sleep, while she is ill, and drinks no wine." And in letter 13: "As to what you wish

to know about the wine, I tell you that it is red now, but I do not know how much longer it will be so; but I will let you know about it."

Still further this most wretched wife was moved with a burning ardor for the said priest, as is noted in letters 5 and 21; this is usually conceived by lovers only. Therefore, since it is undeniable that the carnal love¹⁵⁰ was reciprocal between them, I think it can not be doubted that her departure from the home of her husband and their association through a long journey prove their adultery. [Citations.]

In the progress of the journey kisses were given on both sides;²⁰⁶ of this the witness²⁰⁶ for the prosecution testifies; but I do not find in the evidence that he saw these at night [exi], as is supposed by the other side; for page 100 asserts "I only saw that at times they kissed each other." And these kisses Francesca so strongly desired to give and to receive likewise, that in letter 11 [we read]: "I thank you for the kisses you send me; but if yourself could give them to me, I would hold them dear. I give you as many million more." And in letter 10: "And giving you an amorous kiss." And in 5: "I say good bye with a million kisses." And here and there in the other letters. These render the adultery not at all doubtful, so much so that there are not wanting authorities who assert that when the kiss is proved the adultery may be said to be proved. [Citations.]

Therefore, unless I am very much mistaken, no one who knew what we have recounted could be found so senseless and so weak-minded as not to believe strongly that when they were found in the inn her matronly shame had been tampered with, either during the journey or at night while they were taking their rest, or more probably in the morning while they were enjoying each other's society.

But passing over the fact that the priest was clothed in laic garb,²¹⁷ pp. 4 and 100, which affords no small weight for the proof of the adultery, all further doubts are removed, since they arrived together at the tavern of Castelnuovo at half-past seven at night,²¹¹ as three witnesses for the prosecution agree in swearing, pp. 44, 47, 49. And although two beds were in the chamber, only one indeed did the said priest wish to have made ready, and all night long,²¹⁵ behind closed doors, he rested alone with her (if lovers can rest); from this the adultery is proved without doubt. [Citations.]

This proof indeed becomes all the stronger from the lie of Francesca, who asserts that they arrived at the said tavern at dawn,²¹² Summary, No. 2, letters F and L. [Cf. pp. lxxxv, lxxxvi.] For if no evil had been done she would not have attempted to hide the truth. [Citation.]

Finally the sentence or decree of this Tribunal,²¹¹ which is given in Summary, No. 8 [cf. p. xcix], where the said priest is condemned for carnal knowledge of Francesca, removes all doubt; because the adultery is thereby rendered infamous, as was proved in our other argument.

And though it is asserted that it was in the minds of the Lords Judges [cxii] to modify this sentence and to add "for pretended carnal knowledge," yet it never was thus modified. And yet such modification would not have stood in the way after it had reached the ears of the luckless husband that the adultery of his wife had been made manifest and notorious and had been confirmed by the Judges' decree.

But certainly, even if we are cut off from this proof, their carnal communication remains more than sufficiently proved for our purpose; for we are arguing not for the infliction of the penalty of adultery, but we have deduced the adultery for exclusion of a penalty. [Citations.] For it is quite customary that, for a civil purpose, such as divorce or loss of dowry, adultery is abundantly proved by circumstantial evidence. [Citations.]

Nor is it of consequence that some of the stronger proofs are proved by single witnesses; for we are arguing to establish dishonesty and adultery in kind; not for the purpose of condemning the adulteress, but for the defense of the accused.

And the reason is very evident, because to excuse a husband from the murder of his adulterous wife after an interval, an exact proof of the adultery is not required, but strong suspicion of adultery is quite abundant, as Sanfelicius testifies it was decided, *dec. 337, num. 13*. But we are upon firmer grounds, because we not only have strong suspicions drawn from single witnesses, but other finely proved grounds, yes, the clearest of proofs, deduced by the Prosecution.

Very little does it stand in the way of this proof of her guilt that Francesca, when near to death,³⁶² tried to exculpate herself and her lover by asserting that there had been no sin between them;³⁶³ for this kind of exculpation, which is all too much a matter of pretense, might help her companion³⁶⁰ just as theretofore she had brought blame upon him; and by no other proof might his inculpation have been removed. This would indeed aid her fellow, but not herself. But since she stands convicted by the abovesaid proofs of having broken her matrimonial faith, it would be absurd that an exculpation [cxiii] made that she might seem to die an honest woman, should be of such efficiency as to destroy the proofs of her baseness. [Citations.] And what is more horrible, that from the said exculpation, her murderer might be the more severely punished.³⁶¹

I have faith, and this helps me to hope, that her soul rests in eternal safety, by divine aid, since she had time to hate her previous life. But no man of sense could praise her testamentary disposition, in which she appointed as her sole heir her son, who, as I hear, was but just born and hence innocent, and who had been hidden³⁶⁹ away from his father, and which appointed as residuary legatee a stranger joined by no bond of relationship.

From these considerations, therefore, it is plain that the adultery of Francesca is fully proved. Hence according to the opinion of the Fisc, her murder, even if committed after an interval, is not to be expiated by the death penalty; not only because of the justly conceived grievance, but because the injury to the honor always keeps its strength, according to the sentiment of Virgil in the *Aeneid*, Book I: "Keeping an eternal wound within the breast."

It is of no force in response to this that he did not kill his wife and the adulterer, whom he had overtaken at the inn of Castelnuovo, but that he merely saw to their imprisonment;²²² as if that, after his recourse to the judge, he could not with his own hand avenge his honor.

For we deny in the face of all heaven that he could have killed either of them, because he was worn out by the rapid journey, and was so perturbed by the agitation of his mind, that he was seized by a fever. And furthermore he had heard that the said priest was armed²²¹ with firearms,²²⁰ as he asserted in the prosecution for flight, at a time when his word can not be suspected, because the murders had not yet been committed, pp. 76 and 77. It is also true that the priest was a terrible fellow,²²⁰ according to the witness for the prosecution, p. 167, and as Francesca herself confesses. Elsewhere, the Accused speaks of the taking away of an arquebus²²⁰ pointed at the officers, as he himself asserts, p. 71. And furthermore, Caponsacchi was all too prompt and too much disposed to resisting, as we read in letter 18. There, in speaking of the opiate to be given to the domestics, he adds: "If by ill luck, they shall find it out and shall threaten you with death, open the door, that I may die with you, or free you from their hands." And the wife, indeed [cxiv], was unterrified, full of threatening, angered, and even furious, as the outcome proved; since when captured by the posse of the Ecclesiastical Court, she dared, in the very presence of the officers and other witnesses, to rush upon her husband with drawn sword.²²⁷ And she would easily have killed him, if she had not been hindered, p. 50. He, indeed, weak, as he is, and of insufficient strength, could not have taken vengeance by killing both, or either of them, provided²²² as he was with only a traveler's sword.²⁰⁴ Hence, as he was not able to kill them, he saw to their imprisonment in the confusion of his mind, in order that he might prevent the continuation of his disgrace, and thus might hinder their future adultery.

But, indeed, even if he could have killed them, and did not do so, he would be praiseworthy; for up to that time the adultery had not been made notorious by the sentence of the judge, and only strong suspicions of it were urging him on.

But as for the recourse to the judge, whereby it can be claimed that he renounced the right to kill his adulterous wife, which we deny, I pray you note that the Tribunal acted prudently in placing Francesca in the

Monastery,²⁷⁸ that she might be kept more decently than in a prison. Then when it received the attestation of the physician as to her condition,²⁸³ lest she might be kept there destitute of necessary aids, and so might undergo punishment in the very course of events (which is everywhere avoided), after obtaining the consent of Abate Franceschini,²⁸⁸ brother of the Accused, the court permitted her to be placed in the home of her parents with the warning to keep that home as a prison.²⁸⁴

But I can not commend any one, whoever he may be, who tried to get Francesca from the Monastery under the false pretense of ill health, since he could legitimately and with more decency have succeeded in his intent by laying bare the truth, namely her pregnancy.²⁸⁵ But this was done for no other reasons than these : either that the son might be hidden away²⁸⁶ from Count Guido, since the law presumes that he was born of his legitimate father, although his wife had shown herself incontinent; or else Francesca, believing that the child was conceived of some one else, possibly was trying to hide from her husband the fact of her pregnancy.

And now in the meantime, let it please my Most Illustrious Lord to turn his eyes toward Arezzo and for a little while to think of Count Guido stained with infamy, when the decree of condemnation for adultery reached his ears. The adulteress was still unpunished, and he was ignorant of the fact that she could not be punished, owing to her supposed ill health, and that during her pregnancy, which she had so carefully hidden from him, she was unsuited to the vengeance of the sword. Furthermore, when he saw that [cxv] Francesca had gone back to that very suspicious home of Pietro and Violante, who had instilled Francesca with dishonesty, had repudiated her, and had professed that she was the daughter of a harlot,²⁸⁷ he lost all patience, as is evident from the deposition of Blasius, p. 318, where we read: "But still further, she had been received back into the home, after she ran away from Guido, although the latter had put her in a Monastery." This change drove to desperation²⁸⁸ her luckless husband, who was at least an honorable man. Therefore his recourse to the judge ought not to increase the penalty for him.

We do not deny that Abate Franceschini had given consent²⁸⁸ to the removal of Francesca to the home of Pietro and Violante (in order that we may yield to our respect for my Lord Advocate of the Fisc), but only on verbal representation, for I have not been able to see it in writing. But, for our proposition, this does not affect Count Guido, since it is not made clear that he was informed of such consent, and thus far the Fisc merely presumes that he had been informed by Abate Franceschini, his brother, of this consent. [Citation.]

We are compelled to affirm that this knowledge is not to be presumed, as is shown below, or at the very worst there is present only presumptive

knowledge. And I do not think that on this kind of merely presumptive knowledge the death penalty can be demanded, nor can Count Guido be condemned, since he has neither confessed nor been convicted of such knowledge: chapter *nos in quemquam*, where we read: "We can not inflict sentence upon any one unless he is either convicted or has confessed of his own accord."

Indeed, what if Count Guido had acknowledged that he had written the consent furnished by the Abate, his brother, since it had no special authorization for that particular matter; nor a general authorization to conduct litigation, but only to receive moneys taken from himself by Francesca, as is to be seen, p. 136. By exceeding the limit of his power, Abate Paolo would have exasperated the mind of Guido; for the luckless man was already burning so with rage at the temerity of Francesca, Pietro, and Violante, that he was almost driven, I might say, to taking vengeance. He had put this off as long as he had any hope that he might have the marriage annulled because of mistake concerning the person married. For he was ignorant of the point of Canon Law that error as to the nature of the person contracted does not render a marriage null, but only an error as to the individual.²⁹⁸ [Citation.]

Nor does it amount to anything that Francesca, at the time she was killed, was under surety to keep the home as a prison, as if she were resting in the custody of the Prince.²⁹⁹ For, however that may be, even if [cxvi] the Accused had killed Francesca to the offense of the Prince, yet since he wished to recover his honor and to remove with her blood the unjust stains upon his reputation, for this particular reason the aforesaid custody is not to be given attention, nor does it increase the crime; as in the more extreme case of one injuring a person having safe-conduct from the Prince, Farinacci affirms in making a distinction [Citation] where knowledge thereof is not to be presumed.

Furthermore, when we speak of custody we should understand it to apply to public custody and not to a private home as was proved in our other argument. Nor is the response enough that this would hold good in the one under custody, but not concerning the custodian, Violante; for I do not know any probable distinction between the two, since both cases may suffice for escaping the penalty; nor is any stronger reason to be found for the one than for the other. And indeed a third case would be more worthy of excuse, of one who broke this kind of custody, when knowledge thereof was not proved. Because such an offense might arise under such custody, just as one who had killed a person under bann, but ignorant of that bann, excused himself. [Citations.]

If therefore Count Guido is not to be punished for murder of his wife, for the same reason he can not be punished for the murder of Pietro and Violante,³⁰¹ because these murders were committed for the same cause, *causa honoris*. For at their instigation, Francesca found

her lover, and still more, in order that they might disgrace Guido, they did not blush to declare that Francesca had been conceived illegitimately, and had been born of a harlot.¹⁰⁵ This greatly blackens the honor of an entire house, as Gratian observes [Citation]; for the daughters of such are usually like their mothers.¹⁰⁶ Then also, as I have said above, the Accused burned with anger when he had notice of the return of Francesca to their home, p. 318, and the following. And Alexander proves this in his confession where he says, p. 646: "So that he had to kill his wife, his mother-in-law, and his father-in-law: because the said mother-in-law and father-in-law had a hand in making their daughter do evil, and had acted as ruffians to him." This following fact makes it all the clearer, because on the fatal evening when they were slain, at the knock on the door,³²¹ and as soon as Violante heard the much beloved name of the lover, straightway she opened it.³²³ And thus she showed, unless I am mistaken, what removes all doubt that Pietro and Violante were not at all offended with the love affairs of their daughter and her lover.

It is all one, because we are compelled to acknowledge either [first] that the Comparini had done new injury to his honor by receiving [cxvii] her into their home after they had declared that she was not their daughter, and after her adultery was clearly manifest, and hence there should be departure from the ordinary penalty. [Citation.] For just indignation, when once conceived, always oppresses the heart and urges one to take vengeance. [Citation.]

Or else [secondly] we must acknowledge a cause of just anger continued, and indeed was increased, which is quite enough foundation for asserting that the murders were committed incontinently. [Citations.]

Since, then, from the confession of Count Guido as well as from that of his associates, and since from so very many proofs brought forward in the trial it is evident that Guido was moved to kill them by his sense of injured honor, in vain does the Fisc pretend that for some other remote reason he committed the crimes. For, to tell the truth, I find no other cause which does not touch and wound the honor, if we only bear in mind what Guido has said in the trial, pp. 96 and 97: namely, that the Comparini had arranged the flight of Francesca and had plotted against his life. This alone would be enough to free him from the ordinary penalty. Bertazzolus and Grammaticus [Citation] testify that a man was punished more mildly who had had one who threatened him killed, though the threats were not clearly proved. [Citations.] "And the death which he had threatened fell upon himself, and what he planned he incurred," and also: "There is no doubt that one who had gone with the intention of inflicting death seems to have been slain justly."

Another cause of the murder alleged by the Fisc is the lawsuit ⁴²¹ brought to annul the promise of dowry.²⁶⁰ Upon this point a complete and a very skilful examination was made by the other side, and because of this it was pretended that he had incurred the penalties of the Alexandrian Constitution and of the Banns.⁴²¹ But this pretense in fact soon vanishes. For if we look into it well we shall find, without difficulty, that a cause of this kind [exviii] is no less offensive to the sense of honor. For the ground on which Pietro had attempted to free himself from the obligation to furnish the promised dowry was this solely: that Francesca was not his own daughter, but the child of an unknown father and of a harlot.¹⁰⁵ Every man, however, well knows whether this kind of a declaration would wound the reputation of a nobleman.

Whether or not a pretense of this kind could have found a place for itself before we had the confessions of Count Guido and his companions, as I have said above (for then the Fisc might have been in doubt how Guido could be moved to kill her), yet thereafter it was clear from the confessions of them all that the sense of injured honor had given him the impulse, and had even compelled him to the killing, as Count Guido asserts, p. 678, where we read: "To inflict wounds upon them, inasmuch as they had injured my honor, which is the chief thing." Vain is it to inquire whether he had killed them for some other reason, because, as it was clearly for honor's sake, the Fisc never could prove that they were killed on account of the lawsuit, and not on account of honor, as is required for the incurring of the penalty of the aforesaid Bull. [Citation.]

These statements are apt also as regards the murder of Francesca, who had sought a divorce.²⁶⁶ For if she had made pretense of being separated from him for any other reason, and if her dishonor were not perfectly clear, then indeed there might be room for the Alexandrian Constitution. But since wounded honor gave occasion for the murder, we are far beyond the conditions of the Alexandrian Constitution. Otherwise a very fine way would be found for wives to act the prostitute with impunity. For if it were possible, after adultery was admitted, to bring suit for divorce, they would find a safe refuge to escape the hands of justly angered husbands, and would be rendered safe by the protection of the said Bull even though the divorce was not obtained and though the husbands had been offended because of their dishonor.

But still less can such capital punishment be inflicted upon Guido on the pretext that he assembled armed men, contrary to the rule of the Apostolic Constitutions and Banns.⁴⁰⁹ For whenever the question is whether a husband may assemble men to kill his adulterous wife, we are still beyond the conditions of the Constitutions; for they have place whenever men are assembled for an indeterminate crime, and crime does

not follow; then indeed [cxix] the provisions of the Bull are applicable. But whenever men are joined together to commit crimes, and these actually follow,⁴¹¹ attention is directed to the end for which the men had been assembled, and the punishment for that is pronounced, nor is there any further inquiry concerning the beginning (that is, the assembling), as I have proved in my other argument. And I now add another citation [Citations] where, after the question was disputed, he asserts: "But certainly, notwithstanding what has been said above, in the current case, I do not believe there should be any departure from the decision of so many men, whom we may well believe have considered and written the entire matter with maturity and prudence for Our Most Sacred Lord Clement VIII." And at the end of this addition, it is testified that the Apostolic Chamber had so decided it at the order of the said Pope. [Citation.]

This is also proved by the Bans of my Most Illustrious Lord Governor, chapter 82, where they impose a penalty for assembling men for an evil end, if the evil end may not have followed. But they decide nothing when the crime for which the men had been assembled had been put into execution, because in this case the penalties for assembling cease and only the penalty for the crime committed is inflicted, as was said above.

And that the assembling of men for the purpose of recovering one's reputation does not fall under the penalties of the Apostolic Constitutions, see *Farinaccius cons. 65, No. 66.*

Finally the matter of carrying prohibited arms⁴¹³ is still left for consideration. Even if some authorities have asserted that this is not to be confounded with the principal crime, yet the contrary opinion is held by the majority; for the purpose is to be considered, which the delinquent chiefly had in mind. So Bartolo holds in our very circumstances. [Citations.] [cxx] And on the point that one killing for honor's sake, with prohibited arms, is still to be punished more mildly, Matthæus testifies that it has been so judged. [Citation.]

This also holds good in the more extreme case of several crimes, which can easily be committed separately and which tend toward different ends; yet, if they are committed at the same time and for the same end, the punishment only for the crime which was chiefly in mind is imposed. Thus, if one wishing to commit theft climb over the walls of the city,⁴¹² though he could commit that deed without the crime of crossing the wall (which is a very grave crime, according to Farinacius, *quaest. 20, No. 146*), even then only a single penalty, namely that for theft, is inflicted, as the one chiefly in mind; and this is a little harsher than that for crossing the walls of the city, but is not of utmost severity. [Citations.]

Nor does it escape my notice that the Bans of our Most Illustrious Lord Governor, chapter 8, seem to settle the question by deciding that the punishment for carrying arms ought not to be confounded with punishment for the crime committed therewith. Nor do I fail to see, still further, that these Bans do not include one of the companions, who was a foreigner and not of that district. But since by common law these Bans receive a passive interpretation whenever arms are not borne for an ill end and then some crime is committed with them (because the delinquent did not have in mind the crime which he committed), he is punished for both crimes because at divers times he committed different crimes. But when any one bears prohibited arms with the purpose of murder, and then commits the murder, the chief crime of homicide, in view of which he bore the arms, is considered and the penalty of murder is inflicted, but not that for carrying the arms. [Citations.]

I beg you note that this crime in question is made important from the fact that those three who had no fear of ill, but who ought by all means to have feared, were slain, and not because of the kind of arms with which they were slain. The number of the victims, and not the instrument of their death excited astonishment, and it would have been the very same if they had been slain with the longest of [cxxi] swords, or with sticks, or with stones.⁴¹⁵ Therefore it would indeed be a very hard matter that the Fisc should be afame over these murders, and not being able to demand the death penalty for them, should demand it for the carrying of arms.

But beside this, Count Guido denies expressly that he owned, carried, or kept arms of unlawful measure. And although it is asserted by the four associates that at the time of the murders Guido had in his hands a short knife,⁴¹⁶ and had given the same kind of arms to his companions, yet these could not doom him to the ordinary penalty. Thus Farinacci and others affirm after this matter has been well discussed and the contrary opinion confuted. [Citations.]

Nor does he deny that he had on his person a dagger⁴¹⁴ which was entirely lawful. But he did not have it with him at the murder, nor did he carry it for the murder, but only to defend himself if he should find in the aforesaid home outsiders ready to use force against him. And that was permissible to him; for there is ample right to bear arms of this kind throughout the Ecclesiastical State, and (I may boldly add) even in the very City. Because no mention is made of the City, although some places are excepted; according to that very true axiom: "The exception proves the rule in what is not excepted." [Citations.]

And he could the more readily believe that it was permissible for him to do so, because he had enemies in the city who threatened him there

and made plots against him, as Guido himself says; and therefore the bearing of arms of this kind was more necessary here than elsewhere.

Nor is it to the point that, because it is claimed he had killed with forethought, the privilege of bearing this kind of arms should not be granted him. For aside from what is said above and in the other argument establishing the fact that the aforesaid crimes were "for honor's sake," they can not be said to be committed "after an interval." The objection might hold good if he had used the arms in the murder, but as this is not established, it does not seem possible to deny him the right to carry the arms. In any case, although strictly speaking he could be said to have done the killing when armed with the said arms, yet he should not be punished with the extreme penalty of death. In *Caballus case 90, No. 7*: "Yet in fact in these cases I have never seen the death penalty follow, but by grace it is commuted to a milder penalty."

[cxxxii] Finally he can not be said to have incurred the penalty for prohibited arms from the fact that he was present at the murders committed by his associates with such arms; because the penalty of this kind which is due to one furnishing the said arms does not extend to the helpers and assistants. [Citation.]

I do not speak of Domenico and Francesco, because these last two, as foreigners,⁵¹² are not bound by our Banns. But all matters fight for all of them and every single ground for the diminution of the punishment, which favors Count Guido, also favors them all; since accessories are not to be judged on different grounds from the principal, as I have shown in my other argument. There I cited, not the authority of one or another doctor singly, but the decisions of the highest magistrates. Clar also testifies that this opinion has been observed in actual practice. § *Homicidium, sub No. 51.*

But I earnestly beg⁵¹³ that my Most Illustrious Lord will be pleased to consider with kindly countenance and untroubled vision that Count Guido did the killing that his honor, which had been buried in infamy, might rise again. He killed his wife, who had been his shame, and her parents, who had set aside all truthfulness and had repudiated their daughter. Nor had they blushed to declare that she was born of a harlot, in order that he might be disgraced. They also perverted her mind, and not merely solicited, but even by the strength of her filial obligation compelled her to illicit amours. He killed her lest he might live longer in disgrace, loathed by his relatives, pointed out by the noble, abandoned by his friends, and laughed at by all. He killed her, indeed, in that City which in olden days had seen a noble matron wash away the stains of shame with her own blood—stains which against her will the son of a king had imposed upon her. And thus she expiated the violent fault of another by her own death. (See Valerius Maximus and Titus Livius.) This city also saw a father go entirely unpunished, and

even receive praise, who had stained his hands with the murder of his daughter, lest she might be dragged away to shame. [Citations.] So much did the fear of losing his honor weigh upon his heart, that he preferred to be deprived of his daughter rather than that she should continue to live in dishonor, even against her own wish. Count Guido did the killing in their own home, that the adulteress and her parents, who were aware of her crime, might find out that no place nor refuge whatsoever was safe from and impenetrable by one whose honor had been wounded. He killed them lest deeds of shame might be continued there, and that the home which had been witness of these disgraces might also be witness of their punishment. He killed them because [cxxiii] in no other way could his reputation, which had been so enormously wounded, find healing. He killed them that he might afford wives an example that the sacred laws of marriage should be religiously kept. He killed them, finally, that either he might live honorably among men, or at least might fall the pitied victim of his own offended honor.

H. ARCANGELI, *Procurator of the Poor.*

[cxxiv]

[File-title of Pamphlet 8.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case.

*For Count Guido Franceschini and his Associates,
Prisoners, against the Fisc.*

*New Memorial of the fact and law,
together with a summary,
by the Honorable Procurator of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Most Illustrious and Most Reverend Lord:

The confessions of Count Guido Franceschini, and of Domenico Gambassini, Francesco Pasquini and Alessandro Baldeschi, his companions, are null; and therefore they should be given no consideration, as they issued under fear of the rigorous torment of the vigil,⁵²⁸ unjustly decreed against them. [Citations.] And this is true even though they still persevere in the same confessions. [Citation.] For as we have said in our past argument [cf. p. xxxv] (which may be reassumed here by favor), the Constitution of Paul V, of sacred memory, issued for the reformation of the tribunals of the City [Citation], commands that this torture be not inflicted except under two concurrent circumstances. One of these is that the accused be under the strongest of proofs, and the other that the crime be very atrocious. And the authorities alleged in my argument § *Quatenus*, etc. [cf. p. xxxv] testify that it has been so practiced.

Nor indeed can the asserted [discretionary] powers of this tribunal give support; because, whatever they may be, they have no place unless the crimes are punishable by death. Raynaldus [Citation] gives this reason: Whenever the defendant should not be condemned to death, he also should not, for the purpose of getting confession from him, be exposed to torture which might cause death, as it almost caused the death of Alessandro, who fainted dead away under two turns at the same torture.⁵²⁹

But the crime, which has been imputed to Count Guido and his helpers, and which they themselves have confessed, is murder neither of the first nor of the second degree, as was fully proved in my past argument. And indeed since Count Guido was moved to kill or to have killed both Francesca Pompilia, his wife, and Pietro and Violante, his parents-in-law, because of his sense of honor—namely, on account of the adultery which Francesca Pompilia committed with their conspiracy and aid, this fact relieves from the penalty of death, not merely himself (according to the texts and authorities alleged in my said argument), [Citations] [cxxxvi] but also his helpers (according to the authorities likewise alleged in said argument). [Citations.]

Gabriellus states: "And much less ought those to be punished with death, because if we will only examine the common opinion of wise men, just anger may excuse from a graver penalty than this; for according to the Gracchian law, Code concerning Adultery, even those who are called and led to the crime should likewise be excused."

Aside from what may be claimed in this present state of the case, that the plea of injured honor is not established, the decree in condemnation²⁷¹ of the Canon Caponsacchi for the said adultery issued in this tribunal, September 24, last past, and given in full in our Summary, No. 8 [cf. p. xcix], makes the matter clear and manifest. [Citations.] For it is there said: "Giuseppe Maria Caponsacchi, of Arezzo, for complicity in the flight and running away of Francesca Comparini, and for carnal knowledge of the same, has been banished for three years to Civita Vecchia." Nor can these words be said to be merely the title of the case,²⁷⁴ which does not make any one guilty, as my Lord Advocate of the Fisc supposes; but the very decree and the title of the case, as seen by me in the original Process, was that which follows: *Aretii in Etruria fugæ a viro.*

But, in brief, the said Canon was condemned merely to the said punishment because he was a foreigner²⁷² and had committed his crime outside of this State; in such case he should be dismissed merely with exile. [Citation.]

Nor is it true that the Court receded from the said decree and still less that a modification of it was demanded. For we have no other fact than that for the purpose of giving some little indulgence to the still asserted honor of the wife and to the decorum of the said Canon, for which the Procurator of the Poor, their defender, kept sharply and [cxxxvii] incessantly urging, in the command for imprisonment, instead of the words of the said decree, these other words were applied: *Pro causa de qua in actis.* These words do not imply the correction of the preceding words, but indeed the virtual insertion of all the acts, and consequently of this same decree also. [Citations.]

And this is all the more true because the said decree could not be changed unless both sides were heard; which, as I remember, was the response given to the said Procurator when he insisted upon the said modification. [Citations.]

But why should I now insist on former matters when there is such conclusive proof of the adultery and further dishonor of the said wife from the many strong reasons deduced in the present stage of the case, and well weighed by my honorable colleague, the Procurator of the Poor, in his customary excellent manner? (I do not here repeat them, that I may avoid useless superfluity.) Hence there is left no room for doubt as to the outraged honor, which indeed impelled Count Guido to the commission of crime. For it would be quite enough that a cause of this kind be verified, even after one has committed the crime, as Berazzolus advises on this point. [Citations.]

Still further, there is no need now to insist on past matters because Count Guido has stated the plea of injured honor not merely against his wife, but against his parents-in-law in his confession, especially page 98:

" Thereupon followed her flight, which was so disgraceful, not merely to my house, which is noble, and would have been so to any house whatsoever, even if of low estate. She made this escape by night with Canon Caponsacchi and his companions. In the progress of her flight along with the driver of the carriage, she was seen by the said driver, kissing and embracing the abovesaid Canon.²⁰⁶ Still further, I have found out that they slept together at Foligno¹⁹⁵ in the posthouse and then again at Castelnuovo. By such proof, she stands convicted as an adulteress, not merely for this, but for other like excesses, which I have since heard that she committed in Arezzo with other persons."¹²³ And page 672, where we read: "And when the said Santi was asked whether he would give ear to offering an affront to the Comparini, because of my honor and the plots they [cxxxviii] had made against my life, Alessandro responded that he would do it, and if some one else were necessary he would find him. Accordingly, after a few days, I received in my home Biagio, who has been twice named above, in company with the abovesaid Santi, and he said that he also would give ear to it, as being specially a question of my honor and the contrivance against my life." And at page 678: "And while we were staying in the same vineyard,³¹⁰ that is in the house within it, we spoke of various matters and particularly of what was to be done, namely of the affronts to be offered to the Comparini (that is to Pietro, Violante, and Francesca, my wife) and of wounding them because they had taken away my honor, which is the chief thing, and had also plotted against my life." And at page 683, near the bottom, we read: "And I would have so much to say that one might write from now till to-morrow morning, if I wished to tell all the trouble and expense I have suffered from the said Comparini. But all this would amount to nothing, if they had not touched my honor and plotted against my life." And page 684: "The Santi above-named was a laborer of mine at my villa of Vittiano,^{159 311} and consequently was informed of all these troubles I had suffered at the hands of the said Comparini. He also knew of the very indecent flight made by my wife in the manner elsewhere told. The abovesaid Alessandro then began of his own accord to seek me out and did find me, so that he might give ear, in the event that I should wish to avenge my honor and the plots which they had made against my life." And page 699: "And she together with Canon Caponsacchi was overtaken by myself at Castelnuovo, where they were arrested by the officers²²⁹ and conducted to these³⁴⁵ prisons.²⁵⁵ In the Court, many a time I exaggerated the excess of her supposed conception in order that they might be punished. I never having seen what would be considered expedient in an affair of such importance to my honor, have been obliged to take some resolution for recovering it, because the Comparini, with greatest infamy, had transferred to me their own ignominy." And page 722:

" And what I said to Alessandro, Biagio, and Domenico, I also said to Francesco once when he, knowing the offenses against my honor which I had suffered, asked me if I were ready to give a beating to my said wife. And I then replied to him that she deserved not merely a beating, but death."

[cxxxix] Such a confession should be accepted with its own qualifications, for the Fisc can not divide and detach this from it (according to the usual theory). [Citations.]

This is undoubtedly true, when, as in the present case, one is arguing for the infliction of the ordinary penalty, whatever may be said, according to some authorities, for the infliction of an extraordinary penalty. [Citations.] Ludovicus extends this conclusion to all qualified confessions in any kind of crime.

This is true especially when the qualification is not merely propped up in some way, but is conclusively proved. [Citations.] For beside the said decree, and the other considerations above, we have his fellows in crime especially swearing that their services were required by Count Guido for committing crime in his very company for the abovesaid reason. Especially is this the case with Blasio Agostinelli, page 316: " Signor Guido told me that his wife had fled from him in company of an Abate, and had carried away some money and jewelry.²⁰⁰ He led me into the very room where she had robbed him of the said jewelry and money, and told me that he wished to go to Rome to kill his wife, and that he wished that I and the said Alessandro would go with him," etc. And page 317: " At the above time the said Guido told me that his wife, for the purpose of fleeing securely with the said Abate, and that he might not perceive it, had mixed an opiate¹⁹⁶ in the wine for dinner to put himself and all the rest of them to sleep. [cxxxi] He also said that he was in litigation with his father-in-law, who had not merely sworn that the said wife was not his own daughter, but still further had received her back into his home, after she had run away from her husband, although he would have put her in a monastery after he overtook her at Castelnuovo during the flight." And Alessandro Baldeschi, page 623: " The said Guido in the presence of myself, as well as that of Biagio, Francesco, and Domenico, told me that he ought to kill the lady, that is, his wife, who was here in Rome, to recover his own honor; and also to kill the father and mother of the said wife because they had lent her a hand in the insult she had offered to his honor." And page 645: " He told us also, in the presence of the keeper of the vineyard,²¹⁰ that he was obliged to kill his wife, his father-in-law, and his mother-in-law, because the latter had lent a hand to their daughter in her ill-doing, and had acted the ruffians too, and because the said Guido also declared that these same people, whom he had to kill, had wished to have himself, that is Guido, killed."

Nor can the plea of injured honor be excluded by the attestations⁵⁵³ of those who afforded assistance to Francesca Pompilia even up to the time of her death: for they attest that she made declaration that she had never violated her conjugal faith.⁵⁵⁵ These assertions are merely testimony given outside of a trial, and do not demand belief. [Citations.]

And more especially as they were extorted and begged⁵⁵⁸ (while the suit was pending and the other side was not summoned) by the heir of the same Francesca Pompilia, for avoiding the prosecution by the Monastery of the Convertites,⁵⁶⁴ which was laying claim to the succession to her property on account of her dishonesty. Such shame would cause all of her hereditary property to be sequestered and judicially assigned to the said Monastery by law. [Citations.]

And this objection to their testimony is especially true because some of the witnesses who swear as above are beneficiaries of the same Francesca Pompilia, so that they might be swearing for their own advantage. For if her dishonor were substantiated, her property would devolve upon the said Monastery, and consequently they would be shut out of their legacies. [Citations.]

And however far these attestations may occasion belief, a declaration of this kind serves to no purpose, because no one is presumed to be willing to reveal his own [cxxxi] baseness. [Citations.] So likewise Francesca Pompilia should not be believed, especially when testifying outside of a court and without oath. [Citations.] Much less are the aforesaid witnesses to be believed, lest more credence be given to hearsay evidence than to its original. [Citations.]

Nor can it be said that no one is presumed to be unmindful of his eternal safety;⁵⁶² for all are not presumed to be Saint John the Baptist. [Citation.] Especially when the argument is concerning the prejudice of the third.⁵⁸⁴ [Citation.] And still more so when the argument is for punishing more gravely the enemy of the declarant. [Citations.]

And therefore, as the plea of injured honor is substantiated, it makes no further difference that the said murders were committed after an interval, according to what we have very fully affirmed in our last argument, § nec verum est [cf. p. xxvi], even down to § *prædictis nullatenus*. [Cf. p. xxxii.] There it was shown that this is the general opinion of authorities, and in accordance therewith judgment has been given from time to time not only in the Sacred Courts, but also in all the other tribunals of the world, as Matthæus well observes, etc. [Citation.]

Nor can there be any departure from this opinion in the present case on the ground that Count Guido did not kill²²² his wife in the act of seizing her in her flight with her lover, but was indeed content to carry her before the judge as an adulteress. For it would not have been safe for him to kill her then; because he was alone and she was in company of

the said lover, a daring young fellow, strong,²⁹ and well armed, and accustomed to sinning. And what is more, this lover was prompt and well prepared to make resistance, lest his beloved Amarillis¹⁶³ should be snatched from him. Likewise she was prompt and ready to hinder her husband even with a sword [cxxxii] she had seized and drawn,²²⁷ lest her beloved Mirtillo¹⁶² might be offended. Guido should not therefore be considered to have spared her nor to have remitted his injury. But lest she might escape into more distant parts where he could have no hope of the due vengeance, his just and sudden anger then counseled him to have her arrested by officers,²²² so that he might kill her as soon as possible; and when afterward a suitable occasion arose, if he killed her, it should be considered as if he had slain her immediately. [Citations.]

And, generally, whatever is done after an interval may be said to be done incontinently, if done as soon as a chance for doing it was given. [Citations.]

But so far is the Law from believing that this kind of injury is remitted by a husband that it rather believes that the spirit of vengeance always continues in him. Therefore it comes about that a wife may be held responsible for looking out for herself; so much so, indeed, that her death which follows thereupon may never be said to be treacherous. [Citations.] Muta speaks of the case of a husband who had his wife summoned outside of the city walls by his son, in order that he might kill her safely, and yet the husband was condemned only to the oars for seven years.³⁹⁵

[cxxxiii] This also makes some difference in the case, that certain authorities hold that a husband may indeed hide his wife's baseness for the purpose of taking vengeance upon her safely later on. [Citations.] Likewise he may have his wife hide his disgrace for the purpose of taking vengeance securely upon the one who wishes to offend her modesty, according to the very famous council of *Castro* 277, lib. 2.

And this is all the more to the point because Count Guido was censured by the Procurator of the Poor himself, the defender of Francesco and Canon Caponsacchi, for this appeal to the judge. [Citations.] We have alleged many of these authorities in our past argument, § *et hac nostra* [cf. p. xxxi]: for they unanimously assert⁴⁸⁶ that husbands are considered vile and horned, if they do not take vengeance with their own hands, but wait for that to be done by the judges, who themselves ridicule and laugh at them. Therefore it is no wonder if the luckless husband, after he had made the said recourse to the judge, as the foolish heat of his wrath suggested to him, wished to avenge himself for his lost honor. For he sinned that he might shun the censure of the vulgar and learned alike,⁴⁸⁷ and that he might not add this infamy also to his lost honor.

Nor is it at all to the point that the said Count Guido, in his confession in one place, beside speaking of his injured honor, also mentions the plots aimed at his life; because the force of honor was far the stronger in his mind, as he himself asserts, page 678: "In consideration of the fact that they had taken away my honor, which is the principal thing." Nor ought any consideration be given the other cause; because, as it is so much weaker, it should be made to give way to the aforesaid reason, as was proved in our former argument, § *Et in omnem Casum* [cf. p. xxxiv], where for another purpose we have adduced Matthæus [Citation], who is speaking in these very terms.

And so far as we desire to give attention to this other cause, it likewise is sufficient for escaping the ordinary penalty. [Citations.]

[xxxiv]

The Fisc acknowledges the relevance of the abovesaid matters; he therefore has recourse to the circumstances attending the crime, namely, the assembling of armed men,⁴⁰⁹ the lawsuit⁴²¹ going on between Count Guido and the Comparini, the prohibited arms,⁴¹⁸ and finally the place where the crime was committed.⁴¹⁹ For Francesca Pompilia was detained in the home where she was killed, as a prison. But a response is easy because such circumstances can indeed somewhat increase the penalty of the principal in the crime, but not so much as to raise it to the highest degree, in such a way that Count Guido and his associates should come to be punished with death. For we find it decided in these circumstances as quoted by Muta [Citation]: "A decision was therefore made in view of the case in general, March, 1617, before his Excellency,⁴⁴⁰ wherefrom the ill manner of killing her⁴⁴⁸ was evident; for he had her summoned by her son, and afterward her body was discovered, which the dogs had eaten outside of the walls. Leonardus⁴⁹⁵ was therefore condemned to the royal galleys for seven years." And Sanfelici [Citation] says: "And although some of them were condemned to banishment, it was because of their mutilation of the privates, a crime for which the Fisc claimed they ought to be punished by the penalty of the *Lex Cornelia de Sicariis*."

And Matthæus³⁹⁶ [Citation] says:

"When the matter had been more carefully considered in the Council, it was decided that the husband had proceeded too treacherously⁴⁸⁹ in pretending absence, in taking his brother with him, and in killing with prohibited arms; because merely by the use of firearms a crime is rendered insidious with us, etc. And it was accordingly decided that, because of this excess, he should be condemned to the penalty of exile for four years and to the payment of 2,000 ducats." And this at the stage of appeal was confirmed [Citation] where we read: "And thus it was decided in the face of the facts proposed in condemning Francesco [xxxxv] Palomi to the penalty of the galleys for ten years, etc.,

from the aggravating qualification of firearms. To the same penalty, Antonio Alvarez was condemned, who had deliberately killed his wife because she was playing him false, etc. The penalty was increased because he was judged to have omitted this earlier, since he did not complain of mere adultery, but of her living as a strumpet. And she could not do this without the indifference and connivance of the husband."

And our reasoning is manifest, because it can not be denied that Count Guido and his associates committed all the aforesaid crimes on the same ground of injured honor. Because just as this excuse should be considered sufficient for escaping the ordinary penalty for murder, so likewise it should be considered sufficient for avoiding the other punishments whatsoever, appointed in the Apostolic Constitutions against those committing other crimes expressed in the same; as the principal purpose of the delinquent is always to be attended. [Citation.]

So it was declared on this point for the purpose of avoiding the penalty inflicted in the 75th Constitution of Sixtus V [Citation] against those who assembled armed men, whenever these men were evidently assembled for the purpose of committing some other crime, such as breaking prison and freeing those detained therein. And three very celebrated students of the Sacred Law, namely Coccini, Blanchetti, and Orani so decided. Their decision is included among others gathered by Farinacci [Citation], and he testifies that it was so decided in the full chamber, in which the case was proposed and examined at the order of Clement VIII, of sacred memory.

Nor does what he wrote later on to the contrary in aid of the Fisc, of which he was then Advocate, stand in refutation; Spada. [Citation.] For this opinion of his was refuted clearly and rejected on the most substantial of reasons and arguments. [Citations.]

And in such conditions, for the purpose of avoiding the penalty of the Bans [cxxxvi] or Apostolic Constitutions prohibiting the carrying of arms, I have alleged many authorities in my past argument, § *neque plures* [*neque vero*] [cf. p. xxxix] and above the rest, Policardus, etc. [Citation], who fully examines the matter. My honorable Procurator of the Poor gathers together others in his present argument, § *remanet tandem*. [Cf. p. cxix.] To these I add, Caballus [Citations], where it says that preparatory acts are to be included with what was prepared, and he testifies that it was so decided by the Sacred Council of Naples.

Likewise, for the purpose of avoiding the penalty set for those killing one detained in prison,⁴¹⁶ and so remaining in the custody of the Prince, I have cited many authorities in my past argument, § *similiter nec aggravari*. [Cf. p. xxxiv.] To these I now add. [Citations.]

Nor does it make any difference that Policardus, in the place cited, and some of the other authorities recently alleged speak of homicide committed in a quarrel or for self-defense. For the attendant circum-

stance of a quarrel relieves one committing crime from the ordinary penalty of the crime only in so far as it overlooks the crime in one who, when provoked, wished to be avenged (as Ulpian says), and insomuch as one swept away by a just indignation is not in the fullness of his intellect.⁴⁹⁴ [Citation.]

But both of these reasons without doubt stand in favor of the husband or of any one else committing murder for honor's sake [Citation], even if they do so after an interval. [Citations.]

And in these very conditions, one killing an adulterous wife after an interval is excused because of just anger, which causes him not to be in the fullness of his intellect,⁴⁹⁴ etc. [Citations.] [cxxxvii]

Ulpian [Citation] also says: "He ought to be angered with a wife who has violated his marriage with her, and his wrath should spring from indignation for contumely when received, and his nature should arise so that he would drive her from himself in whatever manner he could." "For it is more difficult to restrain one's anger than to perform miracles,"⁴⁷⁷ as St. Gregory says. [Citation.]

The other authorities, indeed, who speak of persons committing murder in self-defense with prohibited arms or in prisons should likewise be in our favor. For the defense of honor in the case of men of good birth, especially of nobles, is to be likened to the defense of life itself. [Citations.] And indeed it surpasses life, according to the words of the Apostle³⁸³ in his first letter to the Corinthians, chapter 9: "Better⁴⁸³ were it for me to die than that anyone should deprive me of my glory." And St. Ambrose:³⁹⁴ "For who does not consider an injury to the body, or the loss of patrimony, less than injury to the spirit or the loss of reputation?" And the third Philippic of Cicero: "We are born to honor and liberty; either let us keep them, or die with honor." [Citations.]

So that he who spurns his own honor,⁴⁷⁴ and does not see to regaining it by vengeance, differs naught from the beasts. [Citations.] Indeed he should be considered even more irrational than the very beasts, according to the golden words of Theodoric,³⁸⁴ as quoted by Cassiodorus, which we have cited in our past argument § *Nec verum est.* [Cf. p. xxvi.] [Citations.]

Then as to the lawsuit⁴²¹ going on between Count Guido and the Comparini as regards the fraud about the birth, beside what was said recently [cxxxviii], I pray that it again be noticed that the Constitution of Alexander does not enter where some provocation has arisen from the one injured, as Farinacci well affirms [Citation] in following a decision of the Rota, which he places at the end of his counsel. And we have weighed this heretofore in our past argument § *absque eo quod.* [Cf. p. xxxiii.] Such provocation in the present case resulted from the

injury which the said Comparini inflicted upon this same Count Guido while the lawsuit was pending, because of their complicity in the said flight and adultery committed by their daughter on that occasion.

The other lawsuit which Francesca Pompilia made pretense of bringing against Count Guido, for divorce,²⁶⁶ might be omitted. For beside the considerations offered by my honored Procurator of the Poor in his present argument, § *qua etiam aptantur* [cf. p. cxviii], this suit was brought illegally, because the warning of it, as I suppose, had reached only Abate Paolo, the brother of Count Guido, who had no authority in this matter. And this is true especially because it is not proved that the same Guido had any knowledge of that suit brought, as is now pretended.

As to Blasio Agostinelli enough has been written in the former argument, since he has not been examined anew,³¹⁵ and in his former examination he confessed only that he was present at the said murders, but that he had no hand in them. So the more rigorous opinion of Caballus can not apply to him, who said that such helpers are not immune from the penalty of murder whenever they kill anyone with their own hands. For the opinion of this author was proved by us to be erroneous, in our past argument, § *quidquid in contrarium*. [Cf. p. xxxviii.]

I might wish to add something to what has been said in the past argument as to the alienage and minority⁴²³ of Domenico and Francesco; but it is not yet very clear under what law the Fisc pretends that they miss these. Therefore I will rest satisfied with this response, believing certainly that it will not chance that my Lord Advocate of the Fisc may fashion his own allegations and also respond to ours without communicating them to me, as happened in the past argument very greatly to the astonishment of myself and of others. For he and I both ought to seek the truth and to be advocates of that, as both of us are officers³⁷⁶ of the Prince [cxxix] according to the considerations of Raynaldus. [Citation.] Who indeed desires that anything else than justice be administered, and especially when dealing with poor imprisoned wretches?⁵⁰⁸ In their cause, piety should triumph, because they are the treasure of Christ. [Citation.]

DESIDERIO SPRETI, *Advocate of the Poor.*

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case.

*For Count Guido Franceschini and his Associates,
Prisoners, against the Fisc.*

*New Memorial of law,
by the Advocate of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cxli] An Account of the Facts and Grounds of the Franceschini Case.⁵⁵

[Pamphlet 10.]

The property⁶³ of Pietro Comparini did not amount to more than the sum of 10,000 or 12,000 scudi,⁶⁷ subject to a reversionary interest^{68 69} coupled likewise with the obligation to compound a good percentage of the income.⁷⁰ He therefore had to live sparingly to avoid being reduced to a state of destitution, there being a bar against his use of the capital and of a part of the income. He was also too indulgent to his stomach and was given to laziness,⁷¹ and furthermore had taken a wife with a very small dowry. Then lawsuits came upon him, the income of his bonds⁵³³ was reduced, and other misfortunes befell him, so that he was brought down to a state poor and miserable enough.⁷² So much so that he was several times arrested for debt and, after making a statement of his property, received from the Papal Palace secret alms each month.⁷³

When he found himself in such straits, he⁷⁴ decided to marry off Francesca Pompilia, his daughter, to some person who would undertake the burden of supporting him together with his wife, Violante Peruzzi,⁶⁵ who was a very shrewd woman and of great loquacity. It was with her advice that he had undertaken the affair, and the marriage with Count Guido Franceschini was considered suitable. For when the latter had conducted his new wife and her parents back to Arezzo, his own country, he might be able to find some opportune remedy for their necessities, by the assistance in Rome of Abate Paolo Franceschini his brother, an active and diligent man,⁵⁰ thereby putting in order the patrimony⁹⁰ of Pietro, which had been sequestered and tied up by his creditors. Therefore, when the dowry had been set at twenty-six bonds,⁹¹ with added hope of future succession to the rest of his property by virtue of the reversionary interest⁶⁹ to which the wife was entitled, the bargain was accepted. This bargain was advantageous to Pietro and his wife in freeing them from the straits in which they found themselves.⁷⁷ And it was likewise advantageous to the Franceschini, as the diligence of the Abate, and some temporary expenditure by their house well attests. For they might well believe that they would gain in time the aforesaid property either entire, or little decreased.⁹²

[cxlii] Such from the beginning were the mutual purposes of that unhappy marriage. From this fact one may see how slight a pretext there is for saying that Count Guido, while making the arrangements, had tricked Pietro and his wife by giving an inventory of property with

an annual income of 1,700 scudi,⁹² which income was later proved to be much less. Because the primary end for which the marriage was concluded might very well have been obtained by showing a much smaller income. For it is known that when this inventory was shown by Violante to Pietro Comparini, he said on seeing it: "Ho, ho, it would have been enough for me if it had been only half as much." And indeed it would have been the greatest stupidity in Pietro to have given his daughter a husband, upon the simple inventory of a foreigner and without finding out if this were true so that the real impelling cause of the marriage had been the resources represented in the said inventory. Not even on the mere grounds of propriety and civility may Guido be reproved; because when the said inventory was produced by Pietro in the trial, the Abate Paolo Franceschini was very much surprised at it, so that he took his brother to task about it by letter, and Guido replied that he had done it at the instigation of Violante. For she desired the completion of the marriage and, seeing Pietro irresolute, she induced Guido to give the abovesaid inventory with some modifications for the purpose of stimulating her husband thereto.

The marriage was finally effected, and they all went back together to the city of Arezzo.⁹⁴ Nor were the Comparini mistreated there, as they tried to prove by the unauthoritative deposition of a servant,¹¹⁰ who had left the house in anger. One mere reading of this deposition is enough to assure one that she did this with a bad motive and at the instigation of others, as she herself has declared to various persons. This deposition shows sickeningly the distasteful prejudice with which it was conceived, and especially where she says that a little sucking lamb [cf. p. li] was made to serve as food for seven or eight persons throughout an entire week. And there are other matters alike unfit for belief. [The Comparini] were indeed treated with all consideration and decorum, as Monsignor the Bishop [cf. pp. xcii-xcii] and the Governor [cf. pp. lxxxi-lxxxii] of the city attest; and they are persons much better qualified to judge and much more worthy of belief than a malign and suborned servant. But you may also have the attestation of one who was serving in that household for thirteen months, during the time when the abovesaid Pietro and Violante were there [cxliii]; and he is able to tell many particulars of the good treatment which they received at the hands of the Franceschini.

It is quite true that disturbances of considerable importance arose in that household; but they were occasioned by the bitter tongue of Pietro⁹⁵ and the haughtiness of Violante, his wife. For they laughed at all the proceedings of the Franceschini, and thrusting themselves forward, with pretense of superiority, they brought upon the mother of the Franceschini, and upon the rest of the family, bitter vexations, which were hidden at the time, to avoid violating the laws of hospitality.

And notwithstanding all this, when Pietro and his wife decided to return to Rome, as soon as they expressed their wish, they were provided with money for the journey, and in Rome with furniture to put in order the house they had left.⁹⁹

As soon as Pietro and Violante arrived in Rome,¹⁰⁰ a judicial notice was dispatched at the instance of Pietro, in which he declared that Francesca Pompilia was not really his daughter, and that therefore he was not bound to discharge his promise of dowry.²⁰⁰ To prove this fact, he brought the attestation of his wife Violante. In substance, she declared that for the purpose of keeping her husband's creditors from their rights,¹⁰¹ by virtue of the reversionary interest,⁶⁹ and also for the purpose of enjoying the income of the bonds,⁵³³ she had feigned that she was pregnant and then, with the aid of a midwife, that she had brought forth a daughter.¹⁰² This was Francesca Pompilia, who had come of a most vile parentage.

From this blameworthy act made public so suddenly throughout the entire Court, there necessarily arose in the Franceschini an intense hatred toward the authors of it. But they were able to restrain themselves from the due resentment in the hope that if Francesca Pompilia were not indeed the daughter of Pietro and Violante, as was supposed at the time of the espousal, the marriage might be annulled and they might thus purge themselves of such a blot on their reputation.²⁰¹ Witnesses of this feeling of theirs are found in the many authorities and experts who were requested by the Franceschini to give thought to that point and to express their opinion of it. But as these did not agree, the Franceschini were unwilling then to commit themselves to so doubtful an undertaking, in the prosecution of which they would necessarily be obliged to presuppose and confess that she was not the child of the Comparini. By such a confession [exliv] they would be prejudiced in their interest in the dowry. And therefore they thought well then to pass the matter by that they might avoid exposing themselves to the danger both of losing the dowry and of being unable to nullify the marriage.

Nevertheless they opposed the notice and obtained for Francesca Pompilia the continuance in quasi-possession of her daughtership²⁰² and a decree for the transfer of the dowry bonds.⁵³³ But Pietro appealed from the decree,²⁰⁴ and the case was continued in the *Segnatura di Giustizia*.²⁰² This was followed by the copious distribution of pamphlets¹⁰⁹ throughout Rome, which had been printed by Pietro to the very grave injury of the honor of the Franceschini, not to say to their infamy. But the latter were able again to restrain the just resentment of their irritated minds by cherishing the hope of making the court acknowledge (as did follow) no less the falsehood of their adversaries than their own truth. Supported by this hope, they subsequently bore

with all patience the many insults planned against them by various cliques, and the twists and turns for hindering the transfer of the dowry bonds, the Comparini having trumped up various creditors, whether real or pretended. On account of this opposition, the Franceschini were made to feel the inconvenience and expense of that transfer. Nor have they had any benefit of the income; of which they have been able to obtain not even a two-months' payment.

To such a pitch had the affairs of the two parties come, when Guido, waking up one morning, found that his wife was not in bed. As soon as he arose, he found that his jewel box had been rifled^{198 200} and his wife had fled. Nor was the suspicion lacking that she had given an opiate¹⁹⁶ to Guido and the entire household the preceding evening; and it was thought that this had happened at the suggestion of Pietro and Violante, as he had more than once heard threats of it. He traveled quickly along the way to Rome,²⁰² and after a headlong journey he overtook his fugitive wife, in company with Canon Caponsacchi of Arezzo, at the inn of Castelnuovo.²¹⁰ And as he was alone and unarmed, and they were armed and resolute, he saw that he was unequal to avenging that excess. He therefore thought it well to have them arrested by applying to the authorities of the said place.²²² [cxlv] The court²²⁶ had both of the fugitives captured by the police.²²⁹ They were consigned to the jurisdiction of Monsignor the Governor of Rome,²⁷⁰ and were then conducted to the New Prisons.^{255 345}

The Fisc, indeed, makes much out of the particular that Franceschini should have avenged his insults in the act of overtaking them;⁴⁰³ but, as an adequate response, one should think of the impossibility of his carrying out his revenge because of their precaution in the matter of arms,²²¹ for Franceschini had heard along the way that the fugitives were traveling armed. In proof of this, also, when his wife saw her husband she had the hardihood to thrust at his life with bare sword.²²⁷ For this reason it was prudent moderation to check their flight then by arresting them. And this was all the more true because the adultery of his wife had not then been proved, and possibly he had a repugnance against imbuing his hands with the blood of her whom he had often held in his arms, as long as any hope was left alive of regaining his reputation in any other way than by her murder.

But afterward there were found the mutual love letters²³² of the same fugitives, barefaced and immodest and preparatory to flight. And from the cross-examination of the driver it became evident that during their journey in the carriage they had done nothing else than kiss each other impurely.²⁰⁶ And from the deposition of the host at Castelnuovo, Guido found out that both of them had slept in the same chamber.²¹⁵ Finally, from the sentence or decree of the court in condemnation of the Canon Caponsacchi to banishment to Civita Vecchia

for three years, for "having carnally known Francesca,"²⁷¹ the notoriety and publicity of this adultery followed. Let any one who has the sense of honor consider in what straits and perturbations of mind poor Guido found himself, since even the very reasonless animals detest and abominate the contamination of their conjugal tie, with all the ferocity that natural instinct can suggest. They not only avenge the immodesty of their companions by the death of the adulterer, but they also avenge the outrages and injuries, done to the reputation of their masters. For Elian²⁸⁵ in his Natural History tells of an elephant which avenged adultery for its master by the death of [cxlvii] the wife and the adulterer found together in the act of adultery. And there are other examples also, as Tiraquellus cites. [Citation.]

But returning to the series of events, it must be stated that, after the imprisonment of the fugitives, Guido also came on to Rome and was deeply affected and, as it were, delirious because of the excesses of his wife. He was comforted by his good friends with the hope that this attempt at flight, taken along with the lack of decent parentage of Francesca (under supposition of which he had contracted the marriage) would facilitate the dissolution of that marriage,²⁹⁷ and in that way all the blots upon his reputation would be canceled. Hence, with this hope he returned to his own country, leaving the management of the affair to the Abate, his brother.²⁹⁶ The Secretary of Sacred Assembly of the Council may be a witness of this; for Abate Paolo presented the matter to him and entreated him to propose, in that sacred assembly, this point of law as to the validity of the marriage then—that is, after a criminal sentence in the Tribunal of Monsignor the Governor²⁷⁰ had been obtained.

In the meanwhile the same Abate attended to the plan of petitioning the conclusion of the said criminal cause.²⁹⁹ When Pompilia, to avoid conviction by the love letters, had recourse to the falsehood that she did not know how to write,²⁹⁵ it was easy for the Abate to convict her of that lie by showing the marriage agreement signed with her own hand, as well as by a Cardinal²⁹ now dead, by means of the recognition of the handwriting. But in spite of this, when the merits of the case had been made known everywhere, the same Abate perceived that instead of his being pitied, little by little every one began to laugh at him and to deride him, as he has told several persons. Perchance the attempt was being made to introduce into Rome the power of sinning against the laws of God with impunity, along with the doctrine of Molinos²²⁸ and philosophic sin, which has been checked by the authority of the Holy Office. So many persons would desire to blot out from the minds of men their esteem of honor and of reputation in order that they might sin with impunity [cxlvii] against the laws of men and might give opportunity to adulterers without any check from disgrace or shame.

And it is certain that the Abate, seeing the cause unduly protracted, had just grounds for placing it at the feet of our Lord [the Pope],²⁵⁹ with a memorial in which he declared that he could no longer endure such important and such various litigation and vexation arising from that luckless marriage, and he prayed that a special sitting be appointed for all the cases—that is the ones concerning her daughtership, her flight, her adultery, the dowry, and others growing out of the marriage as well as the one concerning its annulling. But he had no other reply than: “The matter rests with the Judges.”²⁶⁰ So, with devout resignation to His Holiness, he awaited the outcome of the said criminal trial, from which he hoped to regain, at least in part, the reputation of his house.

In the meantime, Pietro Comparini was supplied with plenty of money from the full hand of some unknown person, possibly a lover of the young girl. He vaunted his triumph boldly in the throngs and the shops, places of his accustomed resort, and he praised the resolution and spirit of his daughter for having known how to trick the Franceschini with a disgraceful flight and with the thievery of such precious things, and for having found an expedient to give to the judge in the trial such good replies with all details thereof. He also boasted that in a little while she would return to his home despite the Franceschini. For he would bring so many lawsuits and scandals upon them that they would be forced to be silent and to let matters run on. For these statements we can have the attestations of many persons, in case they are needed. Therefore, because of such stinging boasts and such irritations, the mind of Guido was ever more embittered in spite of all the power he could master for restraining the impetus of his anger which had been provoked by such injuries.

Francesca Pompilia had been previously transferred from the prisons into the Refuge called *della Scalette*,²⁷⁶ where she stayed for some months.²⁸⁵ Then it was discovered that she was pregnant and many attempts were made to secure an abortion. For this purpose, powders and other drugs were given several times by the mother. As this proved useless she was remanded to the home of Pietro and Violante²⁸⁴ on the pretext²⁸³ of an obstruction and the necessity of relieving herself. [cxlviii] There, at the approach of the physicians, her pregnancy was discovered. The truth is, that when her womb began to grow, the nuns did not wish for her confinement to take place within their walls, and therefore a pretext was found for removing her on the grounds of the said obstruction and the necessity of removing it.

Now at this point the Abate found it necessary to break the bonds of his forbearance; for although it was indirectly that he was offended, that is, in the person and honor of his brother, nevertheless it seemed to him that every man's face had become a looking-glass, in which was

mirrored the image of the ridicule of his house. Therefore, being humiliated, though he was strong and constant in other matters, he often burst into bitterest tears, until he felt very much inclined to throw himself into the river, as he indeed declared to all his friends.³⁰⁵ And to free himself from such imminent danger, he decided to abandon Rome,³⁰⁴ the Court, his hopes and possessions, his affectionate and powerful patrons, and whatever property he had accumulated during thirty years⁴² in the same City. Any one may imagine with what pain he parted from these and went to a strange and unknown clime, where he would not meet the fierceness of his scorers, which had been merited neither by himself nor his household.

But the injury of Guido, arising from a sharper and severer wound, within his very vitals as a husband, had the power to arouse his anger even to the extreme. Nor did he consider it sufficient redress to punish himself with voluntary exile for the crimes of others; for such a resolution might be considered by the world as a plain proof of his weakness and cowardice. He soon had sure information that, during the month of December, Pompilia had given birth to a boy²⁹⁹ in the home of the Comparini, which child had been intrusted secretly to a nurse.³⁰⁹ He also heard that the infamy of the friendship with the said Canon had been continued, inasmuch as he was received as a guest into the said home (as was said).²⁹⁸ For like a vulture, Caponsacchi wheeled round and round those walls, that he might put beak and talons into the desired flesh for the increase of Guido's disgrace. Guido accordingly felt the wildest commotion in his blood, which urged him to find refuge for himself even in the most desperate of determinations.

[cxlix] In the meantime he turned over again and again, as in delirium,³⁰⁶ his sinister thoughts, reflecting that he was abhorred by his friends, avoided by his relatives, and pointed at with the finger of scorn by every one in his own country. And the word went abroad that in Rome they were selling his reputation at an infamous market. (This matter has moved the treasurer of the Convertites,³⁰⁴ since the death of Pompilia, to begin proceedings and to take possession of her property.) Added to the above were the continual rebukes which he received because of his lost honor, so that he became utterly drunk with fury.³⁰⁶ He left Arezzo with desperate thoughts, and when he had reached Rome he went to that home which was the asylum of his disgraces. Nor could he have any doubt how much the very name of the adulterer was respected; for when Guido made pretense of delivering a letter of his sending,³²¹ the doors were immediately thrown open: and so, scarcely had he set his foot upon the threshold, before he saw his dishonor proving itself before his very face; of which dishonor he had heretofore had only a distant impression in his imagination. Then bold and triumphant, he no longer feared to upbraid her with unmasked

face for all the insults which had been inflicted upon his honor in that household; and as he looked all around at those walls³²² incrusted with his heaviest insults and with his infamy, the dams of his reason gave way and he fell headlong into that miserable ruin of plunging himself with deadly catastrophe into the blood of the oppressors of his reputation.

There is no doubt that Franceschini has committed the crime of a desperate man, and that his mind, when it was so furious, was totally destitute of reason. As he had lost his property, his wife, and his honor, there was nothing else for him to lose unless it were his miserable life. For, as Paolo Zacchia, the learned philosopher and jurist says in speaking of anger in man: "Such and so great is its force that it does not differ at all from insanity and fury." Galenus very clearly affirms this, adding that when in law it is known that crimes are committed in such a state, they are punished with a smaller penalty, even though it has to do with the very atrocious crime of parricide. Calder [Citation] also gives many other matters on our point in No. 27 and the following numbers. And these theoretic propositions [el] are verified in actual practice in Guido; for he was so utterly mad and void of reason that he entered upon so great an undertaking even at an hour of the night when many people were around. And after that he took no precaution,³²⁴ such as any other person of sound mind would have taken in governing his actions. He set out by the high road on his journey of about seventy miles from the outskirts of the city without providing any vehicles,³²⁵ as if he were merely a traveler leaving Rome. These circumstances are plain evidences of an offended and delirious mind. [Citations.] St. Jerome writes in his letters:⁴⁷⁶

"Where honor is absent, there is contempt; and where contempt is, there is recurring insult; and where insult, there indignation; and where indignation, there is no quiet; and where quiet is wanting, there the mind is often thrown from its balance."

Nor in this case does the legal distinction enter as to whether the one driven by anger committed the crime in the first impulse of anger, or after an interval of time. For this distinction might have a place when the anger arose from an insult in some transitory deed, and one that was not permanent. But in the case we are treating the insult provocative of anger consisted of frequent and reiterated acts; that is, not so much in the passing of the wife from the nunnery to the home of Pietro under an empty and ridiculous pretense, but still more from her staying in the said home with the aggravating circumstance of his own infamy (as has been said above). Accordingly, as the injury is permanent because of the continual affronts which the injured one received, so the vengeance is understood to be taken immediately and without any interval.⁴⁰⁵ This the defenders of the cause have suffi-

ciently proved in their no less erudite than learned writings with their very strong arguments and their unsurpassable learning.

Nor does it amount to anything for one to say that the crime was aggravated, first by the kind of arms⁴¹⁸ used; for Virgil [A, I, 150] says: *Furor arma ministrat*,⁵¹⁴ nor, secondly, by the company of four, or let us say the conventicle;⁴⁰⁹ nor, thirdly, by the place,⁴¹⁷ the excess, or the other circumstances considered by the Fisc. For in a madman, everything is excusable, as it is axiomatic and a very sure principle that nature then arises in such a way that it drives a man from himself, whatever manner is possible, etc. In conformity therewith [eli], Frastro speaks as follows:⁴⁷⁸ “And in truth an ingenuous mind, and one that knows the value of its own honor and reputation, is very painfully offended in a part so sensitive and so delicate; and at such a time reaches the limit of madness and of desperation; for it has lost the light of reason, and in delirium and frenzy can not be satisfied even if it succeed in turning upside down, if that were possible, the very hinges of the Universe, for the purpose of annihilating not merely the authours but the places and the memory of its insults and shames. For “The rage and fury of a man does not spare in the day of vengeance, nor does it grant the prayers of any, nor does it accept in requital many gifts,” as the Holy Spirit speaks on this point, through the mouth of Solomon, in the sixth chapter of Proverbs, at the end.⁴⁷⁹ With this very well agrees what St. Bernard has very learnedly written in his letter to his nephew Robert at the beginning:⁴⁸⁰ “Anger indeed does not deliberate very much, nor has it a sense of shame, nor does it follow reason, nor fear the loss of dignity, nor obey the law, nor acquiesce in its judgment, and ignores all method and order.”

There is no doubt that Samson⁴⁸¹ reached this pitch when he fell into the power of his enemies. He suffered with an intrepid mind the loss of his eyes and other grievous disasters, but when he saw that he was destined to serve as a pastime in public places, and when he there heard the jeers and derision of the people, the anger in his breast was inflamed, so that, all madness and fury, he cried out: “Let me die along with the Philistines.” And giving a shake to the columns which sustained the palace he reduced it to ruin: “And he killed many more in his death than he had killed while alive,” as the Sacred Witness testifies. And Christ himself,⁴⁸² although he was very mild and had the greatest patience while receiving opprobrium and insults without ever complaining, yet answered, when he knew that his honor was touched, “My honor I will give to no one.”³⁹³ And it is certain that any one who cares for honor and reputation would rather die an honored man beneath *mannaia*⁴¹¹ than live for many ages in the face of the world with shame and dishonor.

[clii] This argument, strong as it is, has succeeded in weakening one wise and earnest adherent of the Fisc. And this is why the very learned pen of Monsignor of the Fisc has uttered the following period, which says [cf. p. lxii] :

" But because the Comparini claimed that the furnishing of food to Francesca while in prison was the duty of Franceschini, and the latter declared that it belonged to the Comparini, the Most Illustrious and Reverend Lord Governor, after having the consent of Abate Paolo, own brother of Guido, and his representative in the case, assigned the home of the same Comparini to Francesca as a safe and secure prison under security." But this fact can be clearly explained so that it will not form an objection.

When Francesca Pompilia was about to be taken from the prison to the nunnery, Abate Franceschini was asked to provide the food,²⁸² with the statement that if he refused there would appear a third and unknown person who would assume the burden of it to their dishonor. Therefore the Abate wished once for all to put an end to any chance of receiving new insults; and to avoid every charge of preserving even the slightest sign of relation with this disgraceful sister-in-law, accepted a middle way proposed to him, namely, that Lamparelli, as Procurator of Charity, should make provision for it by the disbursement of his own funds and should pay it back again by what reasonably belonged to the Franceschini; for he reimbursed himself for it with the money which had been found upon the fugitives, and which had been stolen from the husband; at her capture, this money was placed on deposit in the office, where there remained so much of it still that, after all was over, the balance of it was consigned to the same Abate.

And as when the said Francesca was transferred from the nunnery to the home²⁸⁴ of Violante, all the preceding and succeeding circumstances made it very improbable that the Abate gave his consent,²⁸⁸ and as this consent is not found registered among those acts, it seems very clear that it was not given at all. Nor could he legally give it, for he was not the representative of his brother in that matter; for his authorization confined him solely to the power of receiving back [cliii] the money and other things which were deposited in the office. This is proved by his acts and by the story which the Abate then gave to his friends and relatives; and it utterly destroys the assertion of the Fisc, since Abate Paolo says that he was indeed notified that the young woman was obliged to find relief in an indisposition, certified by a physician, and that she was obliged to leave the nunnery and to go back to her father's home. To this, as it seemed a mere pretense, he replied that he could easily undertake to purge the wife in the nunnery without exposing her to such evident danger of greater shame. He also said that he wondered very much that the affection of a father had so suddenly

returned in Pietro Comparini for Pompilia, whom he and his wife had so often denied as their daughter. He wondered how they could both be, and not be,²⁸⁹ the parents of the said woman, according to their own desires to the injury of the house of Franceschini.

And if the solicitor, for the purpose of giving color to the honor of the said lady, has falsely urged many justifications, it is to be noted that in substance all that he says on that point is founded on what with her own mouth she has said in her own favor and what she has proffered to free herself from the blame of her sins, both at this juncture and in the flight, as well as in the trial which may be referred to; in fact, quite the contrary is evident; and from the external tests which the Convertites^{276 277} intended to make, but from which they abstained when they heard the news of the birth of the son. And would that it had pleased God that she had observed the laws of holy modesty! for in that case so great a misfortune would not have resulted from her whims. We should notice, further, that the declaration made by the wife in the face of death may be doubtful in itself,³⁶² in the sense that after confession and absolution one's sin is canceled as if it had never been committed, so that in a court of justice she would no longer have any need of pardon. Therefore, from the above-cited circumstances and very strong reasons, there is no room to doubt that Franceschini deserves the indulgence which the laws give to excesses that find origin from the stings of honor. And, if we were within the circumstances under which the case ought to be adjudged according to expediency, without any hesitation, [cliv] Franceschini should be punished mildly to diminish the force of immodesty and impudence. For the woman is not without adherents, who triumph throughout all Rome in a coterie of treachery, both in public and in private. This is for the oppression and derision against husbands⁶⁶ who have regard for their reputation. And they give the title of pedantry to that circumspection which one ought to practice for the preservation of his own honor.

SUMMARY.

[Pamphlet 11.]

OCTOBER 12, 1697.

No. 1.²⁸⁶

Bond given by Francesca Pompilia to keep her home as a prison.

Before me, etc., Francesca Pompilia, wife of Guido Franceschini of Arezzo, was placed at liberty, etc., and promised, etc., to keep to this home of Pietro (son of the former Francesco Comparini), etc., situated in Via Paolina,²⁹² as a safe and secure prison, and not to leave it, either by day or by night, nor to show herself at the doors or open windows, under any pretext whatsoever, etc., with the thought of having to return again to prison, etc. And after she has recovered her health to present herself at any time whatsoever, etc., at every command of the Most Illustrious and Most Reverend Lord Governor of the City; for the cause concerning which there was argument in the trial, etc., from proofs that may arise, whether new or not new; under the penalty of 300 scudi, laid by the Reverend Apostolic Chamber in the case, etc.

This is followed by the surety in due form.

NOTARY FOR THE POOR.

No. 2.²⁸⁶

Certificate of the Baptism of Francesca Pompilia.

I, the undersigned, certify, etc., as is found in the baptismal record, page 152, the particulars given below, namely:

July 23, 1680. I, Bartolomeo Mini, curate, have baptized the infant daughter born on the 17th¹⁹ of this month to Pietro Comparini and Violante Peruzzi, who live in this parish. To her the following name was given: Francesca Camilla Vittoria Angela Pompilia,¹⁴ etc. In pledge of which, etc.

Rome this 9th day of February, 1698.²⁸⁵

Thus it is, Pietro Ottoboni,²⁶ Curate of San Lorenzo in Lucina.

My dear Father and Mother:

No. 3.
Letter of Francesca Pompilia, written in the prison of Castelnuovo to her parents.

I wish to inform you that I am imprisoned here in Castelnuovo for having fled from home with a gentleman with whom you are not acquainted. But he is a relative of the Guillichini, who was at Rome, and who was to have accompanied me to Rome. As Guillichini was sick, and could not come with me, the other gentleman came and I came with him for this reason, because

[elvi] my life was not worth an hour's purchase.²⁵⁰ For Guido my husband wished to kill me, because he had certain suspicions, which were not true, and on account of these he wished to murder me. I sent you word of them on purpose, but you did not believe the letters sent you were in my own hand.²⁴⁹ But I declare that I finished learning how to write in Arezzo. Let me tell you that the one who carries this was moved by pity and provided me with the paper and what I needed. So as soon as you have read this letter of mine come here to Castelnuovo to give me some aid, because my husband is doing all he can against me. Therefore if you wish your daughter well, come quickly. I stop because I have no more time. May 3.²⁶⁴

Directed to Signor Pietro Comparini, my father, Via Vittoria,⁶⁶ Rome.

No. 4.

Another letter of the same person, in which she calls the Canon to task for dishonorable advances.

I give you infinite thanks for the octaves which you have sent me. All of these are the very contrary of the Rosalinda, which was as honorable as these are immodest. And I am surprised that you who are so chaste have composed and copied matters so immodest. I do not want you to do in everything as you have done in these books, the first of which was so very nice; while these octaves are quite the contrary. I can not believe that you, who were so modest, would become so bold, etc.

No. 5.

Portions of the will of Pietro Comparini.

As to each and all of my properties, etc., I appoint, as my usufructuary heir, my wife Signora Violante Peruzzi, etc. And when she dies I appoint in her stead, in the said usufruct of my entire estate, Francesca Pompilia, the wife of Signor Guido Franceschini of Arezzo. And I do so because of her good character and because for a long time, yes, for many years, I looked upon her in good faith as my daughter, and thought that Signora Violante my wife and myself were her parents. Then I found out that both she and I were tricked in that belief, thanks to the vanity of the schemes, unfortunately conceived by my said wife, to make me believe in the birth of the same daughter. And because of a scruple of conscience¹⁰¹ after the marriage of Francesca [clvii] Pompilia, this fact was revealed to me by Signora Violante my wife. And this pretense of birth was found by me to be a fact because of the information of it from persons worthy of credit.²⁶¹

All this I grant, therefore, on the condition that the said Francesca Pompilia seek again her own city and stay here in Rome, etc., in which city I hope she will live chastely and honestly, and will lead the life of a good Christian. But if she do not come back to this city, or if when she has come back she live with shameless impurity (and may God

forbid that), I wish that she be deprived of the said usufruct of my estate and that opportunity be given for a substitution in favor of the heir mentioned below, as proprietor, etc. Because thus, etc., and not otherwise, etc. And because the chance might arise that she be left a widow, or that her marriage be dissolved, since a lawsuit²⁶⁰ is going on, which was brought before Monsignor Tommati²⁶² by the Olivieri as to her relation as child, and if the said Francesca wish to marry again, or become a nun, I am willing that she separate from my estate as much as 1,000 scudi for the purpose of remarrying or becoming a nun, if she shall so please. And I advise her not to marry again, lest she subject herself a second time to other deceptions. Still further, I give her the power to leave by will 200 scudi more of my estate. And in the event that Signor Guido die first, whereby there would come about the restitution to the said Francesca Pompilia, etc., of the money received by Signor Guido, to the sum of about 700 scudi, etc. (which I think would be at least very difficult, if not impossible, because Signor Guido is wretchedly poor and his family is very poor), I wish that these moneys be not counted against the said Francesca Pompilia in said 1,000 scudi, much less in her power of making a will, because then, etc.

OCTOBER 7, 1694.

No. 6.

Authorization for the management of his affairs made by Guido Franceschini to the person of Abate Paolo, his brother.

Guido, son of the former Tommaso⁴⁸ di Franceschini of Arezzo, of his own will, etc., made and appointed, etc., to be his true, etc., representative, etc., special and general, etc., Abate Paolo Franceschini, his own brother, now living in Rome, etc., for the purpose of carrying on and defending, in the name of the said Constituent, all lawsuits and causes, civil or mixed, already brought or to be brought for any reason whatsoever, and against any persons whatsoever, anywhere, and especially in Rome, whether as plaintiff or defendant [clviii], before any judge, either ecclesiastical or secular, whether before the Congregation or Tribunal, and before one or both, to give or receive charges, or to contest lawsuits, to take oath as regards the calumny, and to furnish whatever other testimony is lawful, etc., and to carry on and obtain each and all other necessary matters, in the same manner and form as the Constituent could, if he were present, and as seems well pleasing to the said Procurator, etc., promising, etc., and demanding, etc.

I, Joseph, etc., de Ricci, Notary Public, etc., of Arezzo was asked, etc., in pledge whereto, etc.

[File-title of Pamphlet 11.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case, with qualifying circumstance.

*For the Fisc, against Count Guido Franceschini
and his Associates.*

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Most Illustrious and Most Reverend Lord:

Why should we waste time in disputing the point whether adultery committed by Francesca Comparini with Canon Caponsacchi, as is claimed by the other side, is sufficiently proved? For in our first information [Pamphlet 5] as to the law and fact in the case, we have already declared that judgment was given in the *Congregation* only for the penalty of banishment²⁷¹ to Civita Vecchia against the abovesaid Canon, and of retention in the nunnery²⁷² against Francesca, because of the very lack of proof²⁷³ of the said adultery. And this is quite right in law, because neither the Canon himself nor the said Francesca have confessed, much less been convicted of it; and because the suppositions brought on the other side are trivial and equivocal. But, even if these latter had been weighty and very urgent, they would not have been enough to establish conclusive proof, but at the most could only lead the mind of the judge to place some minor punishment upon them arbitrarily, as Farinacci testifies. [Citation.]

Therefore there should be strict insistence on behalf of the Fisc upon the point that Guido Franceschini had not the right to kill, after an interval, his wife, whom he had not taken in adultery nor in base conduct, without incurring the ordinary penalty of the *Lex Cornelia de Sicariis*. For in our former writings, § *Alii vero* [cf. p. lxxii] we have proved by the strength of many distinguished authorities that a husband who kills his wife after an interval is not excused from the said penalty.

Now that this fundamental assertion [in their argument] is overthrown, we declare that the rights of the Fisc can not at all be controverted in the case with which we are dealing, since the authorities alleged by the Defense, who excuse a husband from the ordinary penalty, speak in the case of simple murder; and they ought not, accordingly, to be extended to a case made still graver by qualifying attendant circumstances. And for this reason, because the penalty can not possibly be the same, when the crime is greater in the one case than in the other. [Citations.]

Nor for the purpose of overthrowing this fundamental idea of the Fisc can the objection be made that all the qualifying and attendant circumstances, which have been brought together in behalf of the Fisc [clx] should have no consideration, because they tend toward and are preordained for the end had in mind; for the end and intention of Count Guido was directed toward the murder of his wife and the vindication of his honor. But one can well understand how fallacious

this argument really is, from what I have already written in § *Prima enim* [cf. p. lxiv] together with the one following, and § *secunda qualitas* [cf. p. lxv] and *si ergo* [cf. p. lxv]. There we have proved that the learned authorities who can be adduced by the other side speak and should be so understood when the end is licit and not prohibited by law, or else when some qualifying circumstance, through the force of particular Constitutions or Banns, does not establish some further capital crime, distinct and separate. And this is true whether the pre-ordained end in the mind of the delinquent follow or do not follow.

But in our case, from what has been conceded by the lawyers for the Defense, the husband is not permitted by law to kill with impunity his wife, after an interval, for adultery. But he is permitted by law to slay the vile adulterer and his adulterous wife only when taken in adultery. How then can these authorities be applied to our case? For they hold good and find a place for themselves only in a case permitted by law. In these circumstances speaks Laurentius Matthæus [Citation], who is cited by the other side, where in his setting forth a case we may read: "The adulterer and adulteress were slain in the home of the husband, although in that case the husband did not escape unpunished, because he had used firearms."

Nor does it hold good in law and practice that the bearing of arms⁴¹³ is included along with the crime committed. Not in law, as we have affirmed in our other argument § *si ergo* [cf. p. lxv]; nor in practice, because in all the tribunals of the entire Ecclesiastical State, it is held that even when murder in a rage has been committed, if it has been committed with the arms which are prohibited under the capital penalty, especially if these arms come into the possession of the Court, a more severe penalty is inflicted. And murders which should suffer a lighter penalty because they were done in anger are condemned under the ordinary penalty because of the carrying of such arms. Farinacci and Guazzini testify that this has been the practice in the Ecclesiastic State while this Decree has held good. [Citations.]

Still less applicable are the other authorities, who were adduced to escape the order of the Constitution of Alexander. For although [clxi] it is true that for this crime the penalty threatened by the same decree does not enter, unless these three matters are concurrently present, namely craft, the occasion of a lawsuit, and the fact that no provocation has arisen (as Farinacci holds [Citation]), yet in our case, all of the abovesaid concur. As to the craft, there can be little doubt, since by the very confession of the Defendants we have knowledge of the preceding discussion and deliberation for committing the murders. And Decian and others affirm the charge of craft may arise from such a discussion. [Citations.]

The presence of a lawsuit²²¹ is likewise undoubted; because, on the representation of Pietro Comparini, suit²⁶⁰ was not only brought before A. C. Tommati²⁶² as to the dowry promised and the goods subject to entail, for the exclusion of the said Guido Franceschini and Francesca his wife, but also a sentence favorable²⁶³ to the said Franceschini has been handed down by the same judge.

But still further we may gather, from the confession of Franceschini himself, that the provocation whereby he was moved to kill his wife arose because of the pretended adultery; on this point the counsel for the defense have principally insisted. Nor can they deny that this same cause was introduced in the criminal prosecution in the presence of the judge by the same Franceschini. It is quite necessary, then, to acknowledge that this ought to justify the application of the penalty of the Alexandrian Bull; for this decree speaks in a civil as well as criminal cases, as is evident in the fourth paragraph of the same Bull, where we read: "That successively in future times forever, each and all persons, ecclesiastical and secular, of whatever quality, dignity, state and grade of rank and prominence, in their own causes philanthropic or profane, also in criminal and mixed cases, whether now before this Court or pending for the time, their adversaries, or those following or helping them, or the advocates or counsel of them." And also in the place where we read: "If mutilation of limb, or death (which God avert) follow, they incur *ipso facto* beside the loss of their right and case, the sentence for the outraged majesty of the Law."

We believe we have sufficiently canvassed these matters with galloping pen because of the shortness of the time of merely three hours, to prove clearly that [clxii] the foundations of the Fisc affirmed in our former writings still stand fast, in spite of what has been recently deduced by the opposition so fully and so learnedly, but without legitimate proof.

F. GAMBÌ,
*Procurator General of the Fisc
 and of the Reverend Apostolic Chamber.*

[File-title of Pamphlet 12.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City in
Criminal Cases:*

*For the Fisc, against Count Guido Franceschini
and his Associates, Prisoners.*

*Response of The Lord Procurator General
of the Fisc.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[clxiii] Romana Homicidiorum.

[Pamphlet 13.]

Most Illustrious and Most Reverend Lord:

In the beginning of his recent information [cf. p. cxxv], my Lord Advocate of the Poor has criticized as unjust the decree of this Supreme Tribunal, which inflicted the torture of the vigil⁴²⁶ upon Count Guido Franceschini and his associates, for the purpose of getting confession of that most horrible crime committed by them. Hence he claims that those confessions, given under the fear of it and ratified after it was over (as is the custom), can not do the Accused any harm. He attempts, indeed, to deny the justice of the said decree, not merely because of the absence of the quality of special atrocity (as required by the decree of Paul V of sacred memory for the reformation of the tribunals of the City), but also from the fact that the death penalty can not be demanded for the crime under discussion. And this he claims is so (in spite of the unusual powers for ordering the torture of the vigil granted to this Tribunal) lest there may be greater harshness in the course of the trial than in the penalty itself. [Citation.]

In the end of this said recent information [cf. p. cxxxviii], he also criticizes me⁴²⁵ because, to the very great wonder of himself and others, I have failed in my duty of seeking the truth in that I have made certain allegations in the defense of the rights of the Fisc, which I have not communicated to him. I thought he had complained quite enough about that orally, so that he might have spared us his new complaint. But it was not my duty to tell them to him, just as his informations, which he made for the Defense (very learned indeed in their way), have never been made known to me by him. But I assert only this, that I have paid the price of much labor, lest I may seem to have failed in my office and in the reverence with which I attend upon my Lord.

Passing over, therefore, my own personal apology, I go on to vindicate the decree of this Tribunal from the injustice charged against it. I also omit proof of the quality of the crime as to whether it may be considered very atrocious for I have abundantly argued this point in my past response, § *Sed quatenus etiam* [cf. p. lxxvi], with the one following. For I showed that this quality could be sustained because of the attendant circumstances which exasperated and raised the crime to the outraging of the majesty of the law,⁴²⁰ according to the provisions of the Apostolic Constitutions and the General Bans. I think it is quite enough in my present argument to show that for this offense the death penalty [clxiv] should be demanded. I hope to accomplish this with little difficulty, since from the very kind of severe torture decreed, by

judges of such integrity, the applicability of this said penalty is presupposed. And so since nothing new, whether in fact or in law, can be brought, which has not been already examined in relation to the cause for decreeing the torture, now that the confession of the Accused has followed, it is the duty of the Judges to pronounce the execution of the well-deserved penalty, which has been long expected by everyone.

I have said that nothing new is brought by the defense, since their special attempt consists in repeating the plea of injured honor because of the pretended adultery committed by the wife of Guido, with the help and conspiracy of her parents, who were barbarously slaughtered along with her. This plea is offered for the purpose of exciting the pity of my Most Illustrious Lord, and the Lords Judges, in order that Guido and his associates may be punished more mildly, according to the authorities adduced on that point in their first information § *hoc stante* [cf. p. xxv] together with the one following, and § *Prædictis nullatenus* [cf. p. xxxii], likewise with the one following; and in the present information, § *Verum & socios* [cf. p. cxxvi]. But the same response recurs that for the Accused this exception on the plea of pretended injury to honor can afford no refuge, because this plea has no foundation in fact and is irrelevant in law.

For what difference does it make even if the mere strong suspicion of adultery is enough to excuse vengeance taken immediately by a husband against his wife or her lover? If she were found either in lustful acts, or in those preparatory thereto, then because of such a sudden grievance excited thereby, which provokes a man to anger, the penalty should very often be tempered according to the nature of the case and the persons. But it is quite certain that to escape the ordinary penalty of the *Lex Cornelia de Sicariis* for the murder of a wife committed after an interval, the mere suspicion of adultery, however strong, is not enough; but the clearest proof of it is required, either from the confession of the wife herself or from a condemnatory sentence following. [Citations.]

But such proof is entirely lacking in our case. For the luckless wife constantly denied the adultery even till the last breath of her life, as is evident from the sworn attestations of [clxv] priests and others³⁵² who gladly ministered to her after she had been wounded. For they unanimously assert that she always affirmed that she had never violated her conjugal faith.³⁵⁵ Nor did she ask that such sin be forgiven her by the Divine Clemency;³⁵⁶ this assertion indeed should have much weight, since no one is presumed to die unmindful of his eternal safety.³⁵² [Citations.]

Nor are the responses given by the Defense at all relevant; namely that such proof in denial of the adultery is drawn entirely from testimony taken out of court, and extorted by the heir³⁵³ while a lawsuit was

pending, to remove the annoyances brought by the Monastery of the Convertites,⁵⁶⁴ and that some of the undersigned were legatees. They also respond that since such an assertion as hers served to cover her own baseness, it should not be believed, especially as it was not sworn. And further, that although no one is presumed to be unmindful of his eternal safety, yet all are not supposed to be immune from sin, like Saint John the Baptist, which is especially true when the argument is about the prejudice of a third party⁵⁵⁴ and about the more severe punishment of an enemy of the one making declaration.

Now that all these claims are destroyed with so little trouble, the irregularity of the proof could stand in our way, if the Fisc were obliged to assume proof and perfect it. But the burden of proof rests upon the Accused, according to the authorities cited above for avoiding the death penalty, whenever a man kills his wife after an interval. The above attestations are brought merely to damage the proof of pretended adultery, offered by Guido. In this case, certainly, such attestations are not to be spurned, especially when we consider the quality of the persons attesting, since they are priests of well-known probity, and it is incredible that they would be willing to lie. [Citations.]

The further objection that these attestations were extorted by the heir, while a lawsuit was pending, for the purpose of escaping the trouble brought upon him by the Monastery of the Convertites, is also removed by the same reply; because when one is arguing for the proof of an assertion given in the last days of life and in the very face of death, [clxvi] proof can not be established, unless this hold good. And the heir is praiseworthy, because he is obliged to avenge the murder of the one slain, lest he be considered unworthy according to the text [Citation]: "Heirs who are proved to let the murder of the testator go unavenged are compelled to give back the entire property," etc. He procured these attestations that he might guard the good fame of the testatrix; and this was rather because of his zeal for her good repute than to prevent the annoyances unjustly brought, and the quashing of these latter could be turned back for the exclusion of the pretended proof of the dishonesty of the unfortunate wife.

Still less can it stand in our way that some of the signers are legatees, since their interest is not large enough to prevent their giving testimony. [Citations.] And this is especially true when one is arguing to prove a matter which happened within the walls of a home, and the proof of which, on that account, is considered difficult. [Citations.] And such an exception to their testimony, so far as it has any foundation, is utterly removed by the number of the witnesses subscribed to the said attestations. [Citations.]

But [last of all], as to the objection that the assertion of one dying is not to be attended, when directed toward the exoneration of one's

self, because no one is compelled to reveal his own baseness: This might indeed hold good if the adultery had been proved, and if it were not evident that, though wounded, she had died with strongest manifestation of Christian tenderness, which would exclude all suspicion of a lie. In this case such an objection does not hold good, but another very valid supposition takes its place, namely, that no one is believed to be willing to die unmindful of his eternal safety. [Citations.]

For Mascardus [Citation] [clxvii] says that a confession given in the hour of death holds good, and he adds that this approaches nearer the truth, and cites in proof of it Marsilius. [Citation.] The latter affirms that if anyone assert that a person making oath in the hour of death is lying, he says what is improbable. And Mascardus concludes that this opinion is more just, and more in accord with reason and with natural law. And though he offers some limitations, none of these are applicable to our case; and the question about which he was arguing was concerning the assertion of one wounded, as to whether such assertion constituted proof against the one charged; and this differs by the whole heaven from our dispute, if we only note that the burden of proof does not rest with the Fisc. Nor does the assertion of Pompilia when dying tend principally toward vengeance,³⁶¹ since it is quite evident from those making attestations that she shrank with horror from that, as she always professed that she most freely pardoned her husband.³⁶⁵

These matters we have noted beforehand rather in superabundance than because we were obliged to assert the justice of the decree of this Tribunal. It will now be easy to escape the proof of pretended adultery, brought by the counsel for the Defense. For so far as this proof is drawn from the other decree of this same Tribunal, condemning Canon Caponsacchi for flight and carnal knowledge with Francesca Pompilia,²⁷¹ the response⁵¹⁹ which has already been given holds good: namely, that a title should be given no attention,²⁷⁴ but merely the proof resulting from the trial, and the penalty imposed by the sentence. And what if in that decree, along with the "title" of "complicity in the flight and escape of Francesca Pompilia," there was also added the title "for criminal knowledge of the same"? Yet since in the trial itself no proof²⁷³ in verification of this was found, and since the penalty of three years' banishment, does not correspond therewith,²⁷² the mere title should not be given attention, according to the authorities adduced in my past response, § *non relevante*. [Cf. p. excv.]

And on account of the following reason, still less can such clear proof of the pretended adultery be established as is required to escape the ordinary penalty for taking vengeance after an interval. For at the instance of the Procurator of the Poor a correction was decreed by the Judges, with the approval of my Most Illustrious Lord, which substituted a general title relative to that suit, namely *Pro causa de qua in*

actis; and although this correction is not to be read in the record (commonly called the *Vachetta*) in which decisions are usually noted, [clxviii] yet it was made in the order for the dispatching of Caponsacchi to his exile and in the decree assigning to Pompilia the home as a prison. (Summary, No. 1.) [Cf. p. clv.] And since the latter was made with the consent of Abate Paolo Franceschini,²⁸⁸ we may assert that the said change of title became known to him because of his notorious solicitude in conducting the case; and so it would be very improbable that he had not carefully examined such a decree and the obligation made by Pietro to furnish her food,²⁸⁷ without hope of repayment, and the bond given for her to keep the home as a prison. For these reasons his knowledge of that change should be considered as sufficiently proved. [Citations.]

And therefore the response falls to the ground that the decree could not be changed unless both sides were given a hearing. For while Francesca Pompilia, whose defense had not yet been finished, was unheard, much less could the title of criminal knowledge be included in the condemnation of the Canon. For this would be injurious to her, not merely as regards her reputation, but also for the loss of her dowry, for which her husband was especially greedy.⁴⁶ For in this way would an undefended woman suffer condemnation, and what is worse, as the event shows, would be exposed to the fury of her husband. And hence with justice was this correction requested and made. And even if this had not happened, a sentence given against the Canon could not injure her, as it was a matter done with regard to other parties. [Citations.]

But it is quite gratuitous to assert that a change as regards the matter of the trial does also impart the same change as to the expression of the title of carnal knowledge. For since several titles were originally expressed in the decree of condemnation (such as complicity in flight, running away, and carnal knowledge, upon which the suit was based) the statement of the cause contained therein is no more probable as regards one than as regards another, and certainly it is not probable as regards them all. For if they had wished to include all those in the modified decree, they would have said: *Pro causis de quibus in Processu*, for the singular number does not agree with several causes. [Citations.] [clxix] But in the prosecution the charge of "criminal knowledge" was not proved and the Canon could not be condemned for that while Francesca Pompilia was unheard and undefended. This is on account of the indivisibility of the crime of adultery, which does not permit the division of the case for the purpose of condemning the one, while the case is pending as regards the other. And this is especially true when all parties are present and held in prison. [Citations.] The expression, therefore, *Cause, de qua in Processu*, should be understood to apply only to the complicity in flight and running away

(for this could be issued without the condemnation of Francesca Pomilia), and not to apply to "carnal knowledge." For the statement made should be considered applicable only to those matters with which the judgment relative thereto agrees. [Citations.]

And this claim of ours is rendered manifest by the mildness of the penalty²⁷² to which the Canon was condemned, namely, that of three years' banishment. This certainly does not correspond with the offenses of running away with a married woman from her husband's home, bringing her to the City, and carnal knowledge of her. For inasmuch as the attendant circumstance of rape, spoken about, is punishable by the capital penalty, unless a priest is being dealt with, a far severer penalty would have to be inflicted for the adultery alone, if proof thereof had resulted from the trial. [Citations.]

My Lord Advocate of the Poor acknowledges that the penalty was too light²⁷² to expiate harshly such a crime, and especially in accordance with the Constitution of Sixtus, revived by Innocent XI, of sacred memory. And therefore to avoid acknowledging the lack of proof, which might very well be inferred from the lightness of the penalty, he attempts to respond that the said Canon was dealt with more mildly because he was a foreigner and because the crime under consideration had been committed outside of the Ecclesiastical State. [clxx] In this case one should be dismissed merely with exile. But this response is proved to be without foundation for many reasons.

First, because on account of the well-known privilege of the City of Rome, which is the country of all men, even those may be punished here who have committed crime outside of the Ecclesiastical State, which is subject to the secular authority of the Pope. And this is true, not merely for the handling of criminals, which is permitted to any Prince, but for the trial of the crimes. [Citations.] Cyril testifies that he himself had so held in 1540, in the Capitolian Court, and Farinacci testifies that it was so held in this same Court in the year 1580, in the case of Gregorio Corso, who had been condemned to the galleys, because he had committed murder in Florence and had come here to Rome, after seizing the horse of the one he had slain. And this was notwithstanding the fact that the cause was very sharply defended for the accused. [Citations.]

Second, because this authority holds good whenever there is argument for punishing crimes committed by churchmen, who are subject to the jurisdiction of the Supreme Pontiff, and in the City can be punished for their crimes with the ordinary penalty, even though the crimes were committed outside of the temporal authority of the Pope. [Citations.] "Rome is a common country and, therefore, in the Roman courts any cleric or layman may be brought to trial, even though he did not commit his crime there." [Citation.]

Third, because inasmuch as it was claimed that the approach to the City and the carrying away of the wife to the same were done because of lust, and to secure greater liberty for knowing her carnally, by taking her from the home of her husband, so the Canon, on account of this purpose, would have subjected himself to penalties such as could really expiate the crime, and which also might be inflicted here in the City; for one is punishable with the same penalty who continues in a crime here, although he put it into effect outside of the State. [Citations.] Caballus [Citation] holds that, for deciding the jurisdiction of a judge over crimes that have been committed, the person offending, rather than the offense, should be considered. [Citation.]

Fourth, because the pretended carnal knowledge, so far as it [lxxi] can be said to be proved in the prosecution (and it can be verified that the decree was changed with relation to that), happened in the Ecclesiastical State; for the strongest proof of that crime was drawn from the asserted sleeping ²¹⁶ together in the same bedroom at the inn of Castelnuovo. [Citation.] And therefore the Canon could and should have been punished with condign punishment, not merely for his undertaking, but for the adultery, if that had been proved. And since this was not imposed, it may well be asserted that the Canon was not at all condemned for "criminal knowledge," unless one wishes to criticize as unjust that decree, which imposed a mild penalty and one suitable merely to simple running away and complicity in flight, and which was much tempered because of the excuse brought by the Procurator of the Poor. Therefore it may be asserted that the Canon was not condemned for the pretended criminal knowledge, since the nature of the penalty well proves the nature of the crime, with which it should be commensurate, according to Deuteronomy 25: "According to the measure of one's sin shall be the manner of his stripes." [Citations.]

And therefore, since the pretended condemnation of Canon Caponsacchi for criminal knowledge of Francesca Pompilia is excluded, the pretended notoriety of the adultery resulting therefrom also falls to the ground. Neither can this notoriety be alleged against her undefended. And just as public vengeance, which is to be decreed by a judge, can not be based lawfully upon it, so much less should private vengeance be considered excusable, when taken by the husband in murdering her after an interval. He is immune from the ordinary penalty for murder even according to the more merciful opinion only when the adultery is established by the very clearest proofs displayed in confession by the accused, or by a sentence given thereupon.

Likewise it would be superfluous to avoid the presumptions adduced by the Defense, especially by the Procurator of the Poor, to destroy the proof of adultery drawn therefrom; for this single response would be enough, namely, that these proofs were all gathered together in the

prosecution for Pompilia's flight made at the instance of Count Guido, he pressing hard to gain the dowry⁴⁶ because of her adultery. And this was insisted on by the counsel for the Fisc, who wrote acutely upon these matters at that time. And yet, in the report of the cause these presumptions were not considered by the judges because of their irrelevance. This is evident from the lightness of the penalty²⁷² decreed against the Canon. [clxxii] And so the examination of these can not be renewed after the Fisc has yielded and quietly acquiesced in the sentence, from which it could appeal if it considered itself wronged. Nor could Guido legitimately have recourse to such awful vengeance by his own hand. But lest some feature of the case may be left untouched, and that the justice of the decree may be more clearly asserted, I have taken the pains to confute these briefly.

And since, in the first place, the cause of flight is considered by the Defense in order that they may prove that the said flight was entirely illicit and was planned for easier criminal knowledge, the proofs brought for this purpose should be examined. The chief of these was drawn from the asserted letter of Francesca Pompilia,¹¹² written to Abate Franceschini. This makes pretense that her parents urged her to poison her husband, her brother, and her mother-in-law, to burn the home, and to return to the City with her lover. But one can not have a better refutation of this than the very tenor of that letter,¹¹² including matters that are so improbable, yes and indeed incredible, that it was rightly rejected by the judges. For who can be found so destitute and ignorant of filial love and duty as to make himself believe that a mere child, not more than fourteen years old [Citation], married away from her father's home, grieving bitterly for the departure of her parents, and wretchedly kept in the home of her husband, so that she was obliged to have recourse to ecclesiastic and laic authorities,^{135 139} could have written to her husband's brother (who was so unfeeling toward them), with a calm mind, of such base counsels and commands given by them, unless, as she ingenuously confesses, she was compelled by her husband to write it?¹¹⁴ Nor could she, without great peril, refuse her husband, who was demanding this. Such an improbability alone is enough to thrill with horror those reading it, and well shows that she had written this not of her own accord, but under compulsion. [Citations.]

And, therefore, there is no need to examine whether the qualification added to her confession is probable,^{459 464} namely, that her husband had first marked the letters of the said epistle,¹¹⁴ which she had afterward inked by tracing them with a pen; because she did not know how to write.²³⁵ For possibly she shuddered to confess that she had written such matters, even under compulsion of fear [clxxiii], to the injury of her father and mother. Such fear is quite presumable in a wretched

wife of tender age, destitute of all help, away from her father's hearth and in her husband's home. [Citations.] Mogolon says that from the absence of relatives, the presumption of such fear may arise. [Citation.] And this is especially true after she had had recourse in vain to the authorities.^{138 139} Nor is a sufficient proof to the contrary deducible from Francesca's signature to the matrimonial contract, and from the letters that were said to have been written and sent by her in succession to the Canon, or else thrown from the window. [Citation.] For the very brief signature made in the marriage agreement does not show such skill in writing that with the same ease she could have written so long a letter, inasmuch as daily experience teaches that many are found who can scarcely write their own names.

Still less can the ability to write be said to be proved by the asserted love letters; for these were constantly denied by Pompilia. Nor can these letters be said to be sufficiently verified by the assertion of the said witness for the Fisc,⁵⁴ namely, that she threw from the window a note, which the Canon picked up and then departed. For aside from the fact that the witness stands alone and is of the basest condition, namely a dishonest harlot,¹⁷¹ and so unsuited for proving a matter [Citations], she neither affirms, nor can affirm, that the said letter was written by Francesca Pompilia. Likewise the letters found in the prison of Castelnuovo²³¹ might have been written by some stranger's hand. And even though they had been written by her, inasmuch as they are of a later date, they do not prove her skill in writing at some past time; for she could have acquired this skill afterward²⁴⁸ because of desperation which sharpened her wits, for the purpose of inducing the Canon to undertake the flight with her, so that she might escape the peril of imminent death. For in such matters as these, which are variable and can be changed, one can not well argue from the present to the past. [Citations.] And that in fact she did learn to write in Arezzo after the departure of her parents [clxxiv] is evident from her letter¹⁹ written in the prison of Castelnuovo, and found among her private papers after her death. This is given in the present Summary, No. 3. [Cf. p. clvi.]

The proofs of the abovesaid letter [to Abate Franceschini] drawn from the letters of the Governor of Arezzo, of the Reverend Bishop,¹⁴² and of Bartolomeo Albergotti, are so far from excluding the legitimate reason for flight given by herself and the Canon, during the prosecution, that they rather favor it. For although they criticized her for having such ill-advised recourse to them, they possibly did this to free themselves from censure for having thoughtlessly turned her away.¹³⁹ Therefore it is more probable that by them the minds of her cruel husband and of her mother-in-law, who was pitiless and implacable,⁴⁹ as experience teaches us, were exasperated all the more. Any one

may well know that Guido's mind was much more embittered after the lawsuit brought concerning the pretense of birth and the rescinding of the dowry contract,²⁶⁰ and after the publication of pamphlets¹⁰⁹ about the domestic scantiness and the base treatment which they had suffered in the home of the couple in Arezzo. His anger was also stirred by his jealous suspicion of the Canon (although Pompilia's love of the latter was merely pretended for the purpose of winning him) and by his exasperation, that increases the deadly hatred, which arises from a lawsuit about a considerable amount, and much more about an entire property. [Citations.] Such should the controversy about the pretense of birth be considered. Nor can the just fear of the luckless wife as to her deadly peril be denied. And driven to desperation in avoiding this, she might well have fled; for if it is permissible because of blows beyond mere legitimate correction [Citations] how much more permissible should it be considered, when the wife was continually afraid that he would kill her either with the sword¹³⁴ or by means of poison.¹³³ And, to avoid this, it was but prudent counsel for her to leave her husband and go back to her father's hearth.

It would indeed have been better if she had won her security by having recourse to the Right Reverend Bishop, in order that he might place her in some nunnery or with some honest matron; or to the Lord Governor, who would have considered her safety and the honor of her husband's family; or if she had fled in the company of someone connected with the household.¹⁴⁸ [clxxv] But the fear of imminent peril does not permit one to take better counsel, and especially a wretched wife of tender age, destitute of all aid and exposed to the fury of her husband and her mother-in-law. And still further, she might well fear that new recourse to them would be in vain, since she had found the former so useless. Nor could she find any better way of fleeing safely, wherein she thought lay the sole help for herself, than by using the help and company of the Canon, who had been proposed to her for this purpose by the Canon Conti³⁵ and by Signor Gregorio Guillichini,¹⁴⁶ relatives of her husband. It is incredible that they would have conspired against Guido's honor without the strongest and most urgent reason and without confidence in Caponsacchi's honesty and modesty. For one of them, namely Gregorio,¹⁴⁶ had offered himself as a companion for the journey and would have carried out his offer if his infirmity had permitted; as we read in the said letter¹⁹ of Francesca Pompilia found since her death and shown in our present Summary, No. 3 [cf. pp. clv-clvi], which refers to the same causes, of the infirmity of Gregorio and the imminent peril, which did not permit her to await his convalescence. And therefore she is worthy of excuse since she fled for dire necessity in company of the Canon, a man of modesty well known by her (as is likewise evident from another letter in the Summary of

our opponents, No. 7, letter 12, in which she calls him the chaste Joseph, and from the other letter, in which she commends him for his sense of shame). For if she chose this remedy under dire necessity, she should be excused according to the common axiom, "necessity knows no law." [Citations.]

Nor is an illegitimate cause of flight to be inferred because of the dishonest love with which Francesca Pompilia pursued the Canon in some of these letters.^{232 247} For although they seem amatory, yet they were ordained to the purpose of alluring this same Canon, in order that he might flee with her; since, without him, she knew that she could neither carry that out, nor even attempt it. Hence the letters can afford no proof of subsequent adultery. For although proof may result from love letters, according to the authorities adduced by the Defense in § *His praehibitis* [cf. p. cix], yet this is avoided [clxxvi], if the letters are directed to a permissible end, such as flight to escape deadly peril. For then, inasmuch as the end is permissible, the means are likewise so considered, even though these are not without suspicion; for they are not considered in themselves, but because of their end. [Citations.] Nor is the proof of adultery hitherto drawn from love letters so very strong unless they include the implicit confession of subsequent fornication. [Citations.]

The following consideration is especially urgent in leading to the belief that the luckless girl thought the Canon would conduct himself modestly during the journey. For in one of her letters she does not fail to take him to task (who had elsewhere been commended for honesty and modesty) because he had sent her questionable verses²⁵³ (present Summary, No. 4) [cf. p. clvi]: "I am surprised that you, who are so chaste, have composed and copied matters so immodest." And further on: "I do not want you to do in everything as you have done in these books; the first of them was so very nice, but these other octaves are quite the contrary. I can not believe that you, who were so honorable, would become so bold." From this sincere rebuke it is quite evident in what spirit these letters were written, even though they are filled with blandishments and proofs of love; for she shrank even from the dishonorable verses sent to her. Hence the letters should be understood according to the intention of the one writing them, just as one's words are. [Citations.]

And should not the supposition that the unfortunate wife had destroyed her matronly shame in the journey be therefore considered trivial and improbable? For she had quite enough to do to provide for her own safety by headlong flight. Nor is it probable that she was tempted by the Canon, since the love between them is proved merely by the said letters²⁴⁷ which were preparing for the flight. And these letters show her solicitude for his modesty and continence, since for the

mere sending of them she had made such complaint. For she feared lest he might become too bold, as is evident from details of the letter cited above. Nor are examples lacking of continence observed during a longer and easier journey, which had been undertaken [clxxvii] and completed by lovers, even though they might lawfully have indulged their love. Hence it is not improbable that the wretched girl kept herself scrupulously within bounds; for she was in deadly peril, which she hoped to avoid by precipitate flight.

The other proofs of this pretended adultery are far weaker, and were rightly ignored in the report of the case, both as regards the flight and as regards the decreeing of torment; for mutual love between her and the Canon can not be said to be sufficiently proved by the abovesaid letters; for they were preparatory to this prearranged flight.

The entry and egress¹⁷⁰ to and from the home of Francesca by night is proved by a single base witness.¹⁷¹ Nor should even such entry be considered to be for a bad end, since it was in preparation for the flight. For when we have a permissible cause given, to which a matter may be referred, it should not be attributed to one that is illegitimate and criminal. [Citation.]

To this reason also should be referred her readiness in showing herself at the window by day and night at the hiss¹⁷³ which gave signal that her pretended lover was passing. For since her love might be a mere matter of pretense for the purpose of winning him to give her help in the flight by affording her his company in the journey, these marks of love can be of no further import than the pretended love itself. The unfortunate wife employed it as a stratagem, indeed, that she might provide for her own safety. And so this response recurs: "If the end is lawful,¹⁷⁴ the means ordered toward carrying it out can not be condemned."

The pretended insidious manner of preparing for the flight and putting it into execution by means of an opiate¹⁷⁶ administered to her husband and the servants (so far as it is proved and it was by no means proved in the Prosecution) affords indeed a proof of her flight, but not of adultery; for it was prearranged,¹⁹⁷ not for that purpose, but to escape deadly peril, to which the wife would have exposed herself, all too foolishly, unless she had made sure that her husband, who was lying in bed with her, was sound asleep, or unless she had contrived some such easy way.

The ardor shown in some of the letters²⁴⁷ is indeed a sign of love, according to the word of the Poet: "Love is a thing full of solicitous fear." [Ovid, Heroides I, 12.] But since love was pretended for a legitimate end²⁵² (as was said) [clxxviii] she could also make a show of ardor for feigning love, since it tended toward the same end of winning his good will, so that possessed of his true service she might

escape. Therefore, from this pretended love and these feigned signs of love, one can not argue that their departure together from the home of the husband and their association during a long journey gives proof of the pretended adultery; because even in true and mutual love continence has been observed, which is certainly more difficult.

Nor are the authorities adduced by the Defense in § *Accedit quod* [cf. p. cx] applicable; because that text has regard to a woman spending the night outside of her husband's home and against his will, without just and probable cause, as is evident from the words of the same. This decision is not applicable to our case, since the wretched Pompilia left her husband's home and went to her father's hearth that she might escape the deadly peril which she feared was threatening her. And so, since she did it for just and probable reason, the condemnation of the aforesaid text is turned away. And Farinacci so explains the assertion. [Citations.] "But it is otherwise if done for reason, because the mere spending of the night together does not of itself prove vice; for a case can be given where a wife spent the night with men, and yet did not break her marriage vow." [Citation.] Since this possibility is verified in our own case also, the proof of subsequent adultery can not be inferred from her flight and association with him in the journey, for the purpose of providing for her own safety.

Their mutual kissing on the journey,²⁰⁸ so far as it is proved, affords no light presumption of violated shame; but the proof of it is too uncertain; for it rests upon the word of a single base witness, who swears to matters that are quite improbable, namely that, while he was driving their carriage very rapidly, he saw Francesca Pompilia and the Canon kissing one another. How full of animus this deposition really may be is evident from this fact—that during the night he saw a momentary and fleeting deed, without giving any reason for his knowledge, such as that the moon was shining or that some artificial light afforded him the opportunity to see it. [Citations.] [clxxix] The improbability, or rather incredibility, is increased because, while the witness was intent on driving the carriage with such great speed as to seem like flying (as another witness testifies), how could he look backward and see their mutual kissing? Such an improbability would take away belief not merely from a single witness, but from many of them. [Citation.] Furthermore, there is the possibility²⁰⁹ to be considered that the jostling together of those sitting in the carriage might have happened from the high speed; and from this fact an overcurious witness might believe that they were kissing each other, although in fact the nearness of their heads and faces to one another might indeed be by mere chance, and not for the purpose of shameful and lustful kisses. Because whenever an act may be presumed to be for either a good or a bad end, the presumption of the evil end is always excluded. [Citations.] And so in the

said report of the prosecution for flight, this presumption was justly passed over because of lack of proof; nor would it have been rejected otherwise.

Nor can this improbable and prejudiced deposition of the said witness receive any support from the pretended letters,²⁴⁷ in which Francesca thanks him for the kisses sent, which she says would be dearer to her if they had been given by the Canon himself, and sends him back ten hundred thousand times as many. For it can not be thence inferred that if the opportunity were given their mutual kissing would follow, since these words were offered as serviceable and alluring for the purpose of winning him over; nor do they involve an obligation. [Citations.] And therefore they do not lead one to infer that they were carried out, especially since Francesca many and many a time warned the Canon to observe due modesty. And when she found that he had transgressed its limits by sending her dishonorable verses she abjured him not to become bold in urging his passion. This is far removed from impure desire to receive his kisses, which is formally stated in the said letter, as it is without any thought of injuring her matronly honor.

The use also of laic garb,²¹⁷ in which the Canon was found clothed, [clxxx] can afford no proof, because, as he is no priest, he can not be said to be forbidden to do so on a journey. And this was probably arranged in good faith to conceal himself and to avert scandal, which might be conceived at seeing a priest with a woman in the flower of her age¹⁶ and, as I have heard, of no small reputation for beauty, journeying without the company of another woman or servant. [Citation.] And so the authority of Matthæus Sanzius, etc., is not applicable, because in his case there was no concurrent cause on account of which the priest might approach with improper clothes and girded with arms; and he was found by the husband, either in the very act or in preparation thereto, and was killed on the spot. In such a case the proofs of adultery may well be admitted for the purpose of diminishing the penalty, and they were gathered by the same author to that end.

Their sleeping together²¹⁶ on the same bed, or at least in the same bedroom, at the inn of Castelnuovo, was not given consideration in the report of the prosecution for flight, because of defect of proof. This charge was indeed denied by Francesca Pompilia, and the Canon frankly confessed merely that he had rested for a little while on another bed in the same room. Nor ought a brief stay in that room be magnified to a crime, since it should be attributed to his guardianship²¹⁴ of the said Francesca, whom he was accompanying on the journey, and hence was under obligation to guard²¹⁴ her lest some evil might befall her. Whenever an act may be said to be done for a good purpose all suspicion of evil ceases. In these very circumstances Cravetta [Citation] says that the interpretation should tend toward lenience, even though the

harsher interpretation seems the more probable. Nor does it suffice as a full proof of adultery²¹⁴ (if one is arguing a criminal case) that a young man be seen alone and naked with her, and that he be found locked in the bedroom with the wife, even though he have his shoes and clothing off; because these matters may be merely preparatory. And much less can proof of adultery arise from his brief stay in the same bedroom for the purpose of protecting her.²¹⁴

Nor can proof of their having slept together be drawn from the deposition of the servant of the same inn who asserted that he had been ordered to prepare only a single bed. For it does not [clxxxii] follow from this that both of them slept in it; but this was done because only Pompilia wished to rest a little while to refresh her strength,²¹⁸ which had been exhausted by the swiftness of the journey they had made. The Canon was keeping guard over her²¹⁴ and preparing for the continuance of the journey; and so, when the husband arrived, he was attending to this by ordering that the carriage be made ready.²¹⁹ Hence no proof of their having slept together²¹⁵ can result from this deposition, and it was justly rejected by the judges, so that it needs no further refutation.

And although Francesca Pompilia, in her cross-examination, tried to conceal a longer stay at the said inn by asserting that they had arrived there at dawn, yet no proof of adultery may be drawn from the said lie,²¹² for she made that assertion to avoid the suspicion of violated modesty, which might be conceived from a longer delay and more convenient opportunity. And so, inasmuch as her confession would have done her no harm, even if she had acknowledged it with circumstances leading to belief in the preservation of her sense of honor, neither can this lie injure her. [Citations.]

Since, for these reasons, the proof of the pretended adultery is excluded and almost utterly destroyed, no attention should be paid to the fact that Count Guido, in his confession, claims the mitigating circumstance of injured honor, as regards both his wife and his parents-in-law; and that this confession can not be divided for the purpose of inflicting the ordinary penalty. For authorities of great name are not lacking who affirm that a qualification to this end added to a confession ought to be rejected; and above the others is Bartolo [Citation], who proves this conclusion by many reasons, and responds to those given contrary [Citation], where it is said that a judge should not admit such qualified confession. [Citations.]

[clxxxii] Nor is such a plea of injured honor always in one's favor in avoiding the capital penalty, but only when vengeance is taken immediately; or after an interval, according to more lenient opinion, when the adultery is proved by condemnatory sentence or by confession.

But the reins of private vengeance would be relaxed far too much to the detriment of the state if, when proof of adultery were lacking, a stand could be made for the purpose of diminishing the penalty upon some qualification added by the defendant to his confession. Because in this way a witness might make a way of escape in his own cause, which is not permitted to anyone. [Citations.] And nothing more absurd⁶¹² can be thought of than that the burden of proof incumbent upon him for escaping the ordinary penalty might be discharged by the mere assertion of the defendant.

Nor should we admit the opinion that, even when the adultery is proved, a husband may kill, after an interval, an adulterous wife without incurring the capital penalty, since the weightiest authorities deny that. [Citations.] Bartolo, in distinguishing between real and personal injury, affirms that when injury is personal, it should be resented immediately; but if it be real it may be resented after an interval. [Citations.] And Gomez declares: "I hold the contrary opinion, indeed,⁶¹³ that a husband may be punished with the ordinary penalty of such a crime as murder; and for this reason he may not by any means be excused, because murder can not be committed to compensate for a crime or for its past essence, unless one kill in the act of flagrant crime," etc. [clxxxiii] And in subsequent numbers he responds to reasons given to the contrary. [Citation.] Gaill, after he says that murder committed for honor's sake is permissible, states that this exception should be understood to hold good if the injury be resented immediately, but that it is otherwise if done after an interval. In this case the retort is more like vengeance than the defense of honor, and the offender is held to account for the injuries. [Citation.]

Much less can it be claimed that the vengeance was taken immediately because the husband executed it as soon as possible, according to the authorities adduced by my Lord Advocate of the Poor [Citation], where he tries to show that since Guido was unarmed, or insufficiently armed (that is, he was girded only with a traveler's sword)²⁰⁴ he could not attack the wife accompanied by the Canon; for Caponsacchi, as he claims, is strong and bold,²⁰⁵ and accustomed to sin in that way, and was carrying firearms.²⁰⁶ And the wife showed herself ready to die in the defense of her lover; for it is said still further that the wife rushed upon Guido with drawn sword,²⁰⁷ and was about to kill him, if she had not been checked by the police officers. But the opportunity to kill an adulteress is not to be so taken that a violent death may be visited upon her with all security and without any risk. For every legal opinion giving excuse for diminishing the penalty shrinks from this. For such diminution of the capital penalty follows because of the violence of sudden anger, which compels the husband to neglect the risk to his own life, that he may avenge the injury done him by the adultery. And so

this first opportunity, as spoken of by the authorities, in order that murder may be said to be committed immediately, should be understood to be whenever an occasion first offers itself, in excusing the delay in taking vengeance either because of absence or for some other just reason. Such is the fact in the case about which Matthæus Sanfelicius writes, *contr. 12.* For in that case the adultery was committed in the absence of the husband, and the wife had run away, so that he could not have avenged himself earlier, as is evident from the narrative of fact given in *No. 1*, and *No. 28* established this conclusion: "So they are excused if they take vengeance as soon as possible, since it then seems that they killed incontinently."

But who can say in our case that the husband took the first [clxxxiv] chance, since when he found his wife in the very act of flight, at the tavern of Castelnuovo, he abstained from vengeance with his own hand, and turned to legal vengeance, to which he had always clung.²²² And indeed he charges himself with the worst baseness when he asserts that he was unequal to the task of taking vengeance because of the fierce nature of the Canon;²²³ since, when the latter had been arrested, Guido could have rushed upon his wife. Nor ought the kind of arms they carried to have alarmed him, because, according to the description made in the prosecution, it is apparent that the Canon was wearing only a sword.²²⁴ And so they were provided with like arms. He would not have taken such care of his own safety if he had been driven to taking vengeance by the stings of his honor²²⁵ that needed reparation, even at some risk to himself. For just anger knows no moderation. And he should lay the blame on himself if, alone and insufficiently armed, he had followed up his wife, who was fleeing, as he might fear, with a strong and better-armed lover. His very manner of following her proves the more strongly that his mind had turned toward legal vengeance, for the purpose of winning the coveted dowry,²²⁶ rather than to vengeance with his own hand for recovering his honor.²²⁷ For facts well show that such was his thought. [Citations.]

Likewise the delay of the vengeance after the return of the wife to her father's home excludes the pretended qualification that the vengeance was taken "immediately," because he could not put it into execution sooner. For the return home took place on October 12,²²⁸ of last year, and the murder was not committed till the second of January²²⁹ of this year. And we should rather assert that he was waiting for her confinement,²³⁰ which took place on December 18,²³⁰ in order that he might make safe the succession to the property, for which he was eagerly gaping;²³¹ because he immediately put into effect his depraved plan by destroying his wife and her parents with an awful murder; from a comparison of these dates it will be easy to see this. Hence, it is evident with what purpose he committed the murders, and whether

this vengeance for the asserted reparation of his injured honor may be said to have been undertaken "immediately," that is, as soon as opportunity was given, according to the authorities adduced on the other side.

Then when he had chosen legal vengeance by the imprisonment of the wife and of the pretended lover, and by the prosecution of the criminal cause, it was not permissible [clxxxv] for him to go back to vengeance with his own hand; and in taking that he can not be said to have taken vengeance immediately. He also violated public justice and the majesty of the Prince ⁴²⁰ himself. This single circumstance greatly exasperates the penalty and increases the crime. [Citations.]

[But the above is true] in spite of the fact that the conclusions adduced by the Advocate of the Poor (in § *Et tantum abest*) [cf. p. cxxxii] may be applicable, and likewise the authorities approving those conclusions, on the ground that it is not presumable that the husband has remitted the injury, but rather that his desire to avenge himself has continued; and that this excludes the charge of treachery, even though the husband use trickery in taking vengeance. Because in the present case the question is not as to the nature of the murder, from which it might be claimed to have been treacherous. The husband indeed did not conceal his injury, but rather laid it bare by turning to legal vengeance. Although this is possibly less honorable, yet since it was pleasing to him, for the purpose of gaining the dowry,⁴¹⁹ he could not when frustrated in this hope, because the adultery was unproved, take up again the vengeance with his own hand. And this is true, even though he pretends as an excuse for his delay that he could not accomplish it sooner. For since the delay and hindrance arose from his own act, he could not take therefrom the protection of an excuse. [Citations.]

But, however he might find excuse for the barbarous slaughter of his wife while under the authority of the judge ⁴¹⁹ at the instance and delivery of her husband, certainly the murder of Pietro and Violante ⁴²¹ should be considered utterly inexcusable. In his confession he has tried to apply to them also his plea of injured honor, because of their pretended complicity in urging the flight of his wife and in her asserted dishonor. Yet no proof of this qualification can be brought, nor did the slightest shadow of it result from the prosecution for flight. And this is proved to be improbable, and utterly incredible, from merely considering the fact that Abate Franceschini,²⁸⁸ brother of the accused and confessed defendant, would not have consented that she be committed to their custody if he had had [clxxxvi] even the slightest suspicion of their complicity, since he so keenly desired the reparation of their honor. This fact, which was plainly confessed in an instrument prepared in the statement of fact in the Italian language [Pamphlet 10] and very stoutly denied by the Procurator of the Poor, was ad-

mitted by his own wonderful ingenuity in denying merely that notice had reached the husband, or in claiming that the Fisc could pretend to no more than mere presumptive knowledge in Guido.

But, still further, such knowledge is quite probable and is drawn from strong proof. For it is very probable that Guido was informed by his brother of his wife's departure from the Monastery, of her establishment in the said home, of the obligation²⁸⁷ assumed by her parents to provide her with food, and especially of her detected pregnancy. [Citation.] But we are not now arguing to prove the husband's knowledge thereof, but to draw from that consent of Abate Paolo a proof which would exclude the pretended complicity of Pietro and Violante in the dishonor of the wife, which latter is by no means proved.

So far is such complicity from being proved as regards Pietro, that the very contrary is quite evident from his will, made in 1695, after litigation had been instituted about Pompilia's pretended birth. In this will, notwithstanding the litigation, in the first place he leaves as his usufructuary heir Violante his wife, and, after her death, Francesca Pompilia, laying upon her the obligation to dwell in the City and to live honorably. This is evident from the details of the said will given in our present Summary, No. 5. [Cf. pp. clvi-clvii.] In this he also asserts that she had thus far conducted herself honorably, and he claimed to leave the annuity to her because of her good manner of life. And so it becomes still further incredible that he, while alive, was willing to conspire in her dishonor, from which he shrank even when dead. For the income was to be taken from her if she should live a dishonest life, and he urged her in case her marriage were dissolved to assume a religious dress, and he left her a fat legacy to that end.

Nor can it afford any proof of this pretended complicity that when Guido had made pretense of delivering a letter sent to them from the Canon,³²¹ the doors were immediately opened by Violante³²² [clxxxvii] to the assassins. The attorneys for the Defense try to argue from this ready credulity that the name of the lover was not hateful to Violante, and that hence his intimacy with Francesca was not displeasing. But since the Canon was the author of her liberation from deadly peril by bringing her from her husband's home to her father's hearth at the neglect of his own risk, it should not seem wonderful that Violante should give proof of a grateful mind for the help given her daughter and should open the door. Nor can one infer therefrom consent in unchastity, from which their past acquaintance had been entirely free. Much more is this so at a time when he himself was absent and in banishment at Civita Vecchia.

Therefore the true cause, on account of which the Comparini also were murdered, could be no other than the hatred with which the husband had been afame; [and this first of all was] because of the law-

suit¹²¹ concerning the supposed birth, which they had brought, and which had deceived him in his hope of gaining a fat dowry and inheritance; [and second], his desire for vengeance because of the pamphlets¹⁰⁹ distributed at the time of the said lawsuit, and which had exposed the meagerness of the home comforts and the wretched treatment they had received in the home of the husband. These two do not excuse Guido from the penalty for premeditated murder, and indeed increase it, even raising it to the crime of *læsa majestas*,¹²⁰ according to the well-known order of the Constitution of Alexander, as was proved in our past information, § *Accedit ad exasperandam.* [Cf. p. lxxviii.]

To escape the penalty assigned thereto by the disposition of this decree, in vain does he turn to an excuse drawn from supervening provocation. [Citation.] But so far as it is claimed that this crime resulted from the counsel they gave toward her flight, and their complicity in the same, the proof of such complicity is entirely drawn from the asserted letter,¹¹² written by Francesca Pompilia to Abate Franceschini. But this letter has been completely rejected, and even spurned by Guido himself, since in the prosecution for flight we find no insistence was made that action should be entered against Pietro and Violante for their pretended instigation. Pietro, moreover, had long ago broken off the lawsuit brought as regards the pretended birth²⁶² and the revocation of the dowry contract, and so this complicity can not be made to seem the sole provoking cause, which would exclude *causa litis*. For such a cause should be true and not pretended, and should be in accord with the crime committed. [Citations.] [clxxxviii] These excuses, indeed, which are claimed to be drawn from complicity in the asserted dishonor, are still further excluded by lack of proof, both of the impurity and of their connivance therein; and so the provocation implied therefrom is shown to be entirely irrelevant, and possibly fraudulent.

The other suit for divorce,²⁶⁶ brought in the name of Francesca Pompilia, it is vainly claimed is made void because of the asserted invalidity of the summons; for this summons was executed against Abate Franceschini, who lacked the authority of a proxy. Yet his authorization was quite full enough for a lawsuit, as is evident from its tenor as given in our present Summary, No. 6 [cf. p. clvii], and accordingly when a suit was brought it was ample for receiving a summons. [Citation.] We are also dealing with the conditions of the Constitution of Alexander and of the order of the Banns given against those who commit offense on account of lawsuits. Hence the reply is not relevant, which is given by the Procurator of the Poor in § *Quae etiam aptantur* [cf. p. cxviii], that when the dishonesty of the wife is established her impunity from the wrath of her husband, who would take vengeance, should not be permitted by the introduction of a divorce suit. Nor can such murder be said to be committed for the reparation of honor when

committed in anger at a lawsuit. For he takes for granted as proved, what is in question, namely, the dishonor of the wife, the proof of which is quite lacking. And Guido might have proceeded to such an extreme if, as soon as the adultery was committed, his wife brought a suit for divorce; but it is otherwise since he tried that revenge after the way of legal vengeance had been chosen by bringing criminal charge for the pretended adultery and for the purpose of winning the dowry.⁴⁶ For after he was frustrated in this hope (since no proofs of adultery resulted from the prosecution), and after her husband's mind had been exasperated, she ought to be permitted to provide for her own safety by begging for the remedy of divorce. And while such judgment is pending any murder inflicted upon her ought surely to be expiated by the penalties inflicted under the sanction of the Alexandrian Constitution and of the Banns. For the provision of this decree is applicable, since the murder was committed while the criminal cause, brought against her by her husband, for pretended adultery,²⁶⁹ was still pending. And this decree includes both civil and criminal suits, as is evident from reading it.

[clxxxix] Likewise the assembling of armed men,⁴⁰⁹ and their introduction into the City for accomplishing more safely the murder of the entire family, increases the crime to *læsa majestas*,⁴²⁰ and also necessitates the increasing of the punishment, as was affirmed in our former information. Nor is this avoided by the replies given, or rather repeated, by the Defense, and especially by the response that since the principal offense was committed for honor's sake (and hence the ordinary penalty of the *Lex Cornelia de Sicariis* has no application for that reason), so likewise the penalty for assembling men, imposed by the Apostolic Constitutions and the General Banns, can not be inflicted; for the latter is included with the penalty for the principal offense, which alone is to be attended, since the spirit and purpose make differences in crimes. [Citations.] Because the order of the said Constitution and Banns would prove utterly vain if the penalty for assemblage should cease, whenever the assembly were made for the purpose of committing some crime that is punishable with a milder penalty. [Citation.] This Bull indeed is applicable even when men are called to arms in a permissible cause and in good faith;⁴¹¹ because by it the Supreme Pontiff wished to provide for the public security and to restrain the audacity of those laying down the law for themselves. Hence all the more shall it have place when the assembly may be made for an evil end, namely for committing crime, even though the crime may not deserve the ordinary death penalty, and when the crime actually follows. [Citation.] Spada gives this reason, that the Pontiff in establishing this Constitution considered only the uproar and other ills which are accus-

tomed to arise from the assembling of armed men to the injury of the public peace. And although his opinion was rejected by the authorities adduced by his Honor, the Advocate of the Poor, in § *non refragante* [cf. p. cxxxv], this refutation does not apply to the assembling of armed men to an evil end (even though this end is not so criminal that the death penalty may be inflicted), but to their assemblage for a permitted cause of regaining possession immediately, by meeting force with force. Even in this latter case Spada holds that there is place for the order of the Bull. Hence the refutation given above does not prevent the application of the provision of the abovesaid Constitution to our case, since the assembling was prearranged for the murder of an entire family, which was put into execution with reckless daring.

[cxc] Nor may the opinions of the said judges of the Sacred Rota, requiring that the assemblage be directed against the Prince or the State, and not to commit some other crime, stand in the way; because if this qualification were accepted as true, the decree would be vain which had raised the act to the crime of *læsa majestas*⁴²⁰ and rebellion; for this crime would result plainly enough from the deed itself, and from the intent to disturb the peace of the Prince and the State. And so far as the opinion affirmed by these authorities does have foundation, it can be applied when we investigate the order of the Constitution, and not of the Banns issued later. For this decree would prove vain and useless if the capital penalty, imposed thereby against those assembling armed men, could be applied only when the crime for which the assembly had been made was punishable by the same penalty; and even if this necessity be admitted, the application of the Constitution can not be avoided, because no plea of injured honor can be alleged in excuse for the murder of Pietro and Violante, and it had not at all been proved as regards Francesca Pompilia.

Likewise the preparation and the use of prohibited arms⁴²¹ is also punishable with the capital penalty, if we investigate the order of the Banns and Constitutions of Alexander VIII, of sacred memory. Nor is this sufficiently avoided by the response given by the Defense that it is included in the main offense; so that no greater penalty can be inflicted for it than the main crime itself deserves. For what we have said above as regards "an assembling" is opposed to such a confusing of the punishment of the Banns, and the authorities adduced in our past response, § *nec delationis* [cf. p. cc] affirm the contrary. And those authorities cited for the contrary opinion should be understood to apply only when one is dealing with an insult, or with murder committed in a quarrel, or in self-defense, or for the sake of immediate reparation of honor. [Citation.] The difficulty is at an end in our case, because of the clear disposition of the Banns, which expressly declare and com-

mand that the penalty for the carrying of arms is not to be confounded with the penalty of the crime committed therewith. Nor does the response given by the Procurator of the Poor seem strong enough to avoid this; namely that when, under the common law, the Banns receive only a passive interpretation, merely the crime of preparing and bearing arms for committing murder is considered; but that it is otherwise if the arms are borne, [excil] for no ill end, and then a crime is committed with them. Because it would be too harsh for one bearing arms for no ill end and then sinning with them, to suffer a greater penalty than one preparing arms to commit crime, and carrying his purpose into effect. Hence these Banns never can receive such an interpretation. For since by them the carrying of arms is forbidden as pernicious and as affording occasion to commit crime, much more should the bearing of them when purposed for committing crime be considered prohibited and punishable with a rigorous penalty. This is especially true when we consider the declaration that the crimes are not to be confounded with one another.

There is left, finally, one other qualification, which greatly aggravates the crime, namely the violating of the home assigned as a prison²⁵⁵ with the consent of Abate Franceschini.²⁵⁶ And this is so in spite of what can be alleged as to Guido's ignorance of this circumstance. Because in the said writing prepared in Italian for giving true notice of the fact [Pamphlet 10], it is asserted that the entire management of the cause was left and committed to this same brother,²⁵⁶ since Guido had left the City. Hence it is quite incredible that Guido was not informed by him of so important a matter. And as concerning the distinction between violating a public prison and mere custody in a home under bond, and as to offense permitted therein for honor's sake, we have given sufficient response in our past argument § *Quibus accedit* [cf. p. ccii] and those following. For the same reasoning is applicable in both cases, since in both the person detained is under the protection of the Prince whose majesty is accordingly insulted. And the excuse would hold good if we were arguing about the resenting of an injury offered in prison. Under these very circumstances do those authorities adduced by the Defense speak, as is evident from their recognition of them.

Therefore, in the present case many grave qualifications are present, which increase the crime, and on account of these his Honor, the Advocate of the Poor, admits in § *Agnoscit Fiscus* [cf. p. cxxiv] that the penalty should be increased. Nor can such increase of penalty be made good except by death. For even if the adultery were proved, as it is not proved in our case, the mere murder of the wife, when committed after an interval, could demand only a diminution of penalty, according

to the more lenient opinion. Hence the justice of the decree for the torment of the vigil should be said to be sufficiently asserted and vindicated against opposing reasons. And now [excii] that confession has followed, there remains only that condign punishment be inflicted in expiation of this awful crime.

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc,
and of the Reverend Apostolic Chamber.

[exciii is blank in original.]

[exciv]

[File-title of Pamphlet 13.]

*By the Most Illustrious and Most Reverend
 Lord Governor of the City in
 Criminal Cases:*

Roman Murder-case with qualifying circumstance.

*For the Fisc, against Count Guido Franceschini
 and his Associates.*

*A reply in matters of law, by the Lord Advocate
 of the Fisc.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Romana Homicidiorum cum qualitate.

[Pamphlet 14.]

Most Illustrious Lord:

The matters deduced by his Honor, the Advocate of the Poor, for the defense of Guido Franceschini, who is accused of three murders with very grave qualifications which magnify the same, are of no real force in proving [first] that he should not be punished with the ordinary penalty of the *Lex Cornelia de Sicariis*, inasmuch as he had confessed these crimes, and [secondly] that simple torture only should be demanded for gaining the truth as to these, and that the torment of the vigil¹⁴⁶ should be omitted. I will attempt to show this, in responding to these points singly, so far as the excessive scantiness of time admits, and will keep my eyes on the rights of the Fisc, as the duty of my office and the dire atrocity and inhumanity of the crime demand.

The chief ground taken by my Lord consists in placing on an equality [first] a case of vengeance taken immediately by the husband with the death of the adulteress found in her sin, and [second] that of one slain after an interval when the wife is plainly convicted of adultery (as he claims is proven in our case). But this falls to the ground both in fact and in law; and hence the inference for the moderation of the penalty drawn from this same parity is likewise shown to be without foundation.

In fact, the proof of the pretended adultery is quite deficient according to what I deduced fully in my other information. In that, I have confuted singly his proofs, or rather suspicions, resulting from the prosecution, to which his Honor attaches himself. I have shown that the wife's flight in company with Canon Caponsacchi, the pretended lover, was for a legitimate reason (namely the imminent and deadly peril, which she feared), and not from the illicit impulse of lust. The participation and complicity of the Canon Conti and Signor Gregorio Guillichini,¹⁴⁷ relatives of the Accused, in forwarding the same, ought to prove this. For they would not have furnished aid if she were running away for the evil purpose of violating her conjugal faith, even to their own dishonor. But they well knew the necessity of the remedy, and that it was to free her from peril. And a witness for the prosecution¹⁴⁸ in the same trial for flight swore to having heard this from Signor Gregorio. And they gave their aid in carrying this out.

Nor is it at all relevant that, in the decree in condemnation of the same [excvii] Canon to banishment in Civita Vecchia,¹⁴⁹ the title of "carnal cognition" was written down; because, as was formerly responded, the alteration of that was demanded, and likewise the substi-

tution of a general title relative to the trial. And since no proofs of it resulted either from the prosecution or from the defenses which the unfortunate wife (who was dismissed with the mere precaution of keeping her home as a prison) could have made, if she had not been so horribly murdered, and since the said decree, issued without her having been summoned or heard, would be void, the inscription made by the judge in the records as a title could not convict her of that crime; but only the truth of the fact resulting from the proofs should be considered. [Citations.]

I acknowledge ⁴⁰³ that the Accused should have been considered worthy of some excuse if he had slain his wife in the act of taking her in flight with the pretended lover; since for this purpose, not merely the absolute proof, but the mere suspicion of adultery committed, would be enough. [Citation.] But when, after neglecting the pretended right of private vengeance, he sought out with entreaty public vengeance, by having her arrested,²²² he could not thereafter, while she was under the public authority of the judge, take private vengeance by butchering her who had no fear of such a thing. The suspicion of a just grievance, which is difficult to restrain when aroused, excuses the husband in part, if not entirely, whenever he takes vengeance immediately under the headlong impetus of anger. But when the vengeance is after an interval, and while the cause is in the hands of the judge, and the victim is imprisoned at his own instance, this does not hold good, as will be proved further on, by showing the irrelevance of the principle assumed.

Nor does the Glossa in the alleged text, in the law of Emperor Hadrian, stand in the way; because it speaks of a son taken by his father in flagrant adultery with his stepmother, and killed by the father immediately. [Citation.] And there is a wide difference between a father and a husband killing after an interval; because, as Farinacci adds, a father has the greatest authority over his son, and by ancient law could even kill him. And certainly the husband does not have this. [cxcvii] The law also more readily excuses a father,⁴⁰³ because he is always supposed to take good counsel for his child, from the mere instinct of paternal love. But one does not have this same confidence as regards a husband, who is accustomed to conceive unjust suspicion of his wife more readily. Hence it is not permitted that he kill her on mere suspicion after an interval. Nor is he in any way to be excused on this account, according to the text. [Citation.] "The devotion of a father's love usually takes good counsel for his own children, but the hot precipitancy of a furious husband should readily be restrained." [Citation.]

This is so far true that a father is not excused unless he kill, or at least severely wound, his daughter along with the adulterer; so that it

should be attributed to fate, rather than to paternal indulgence, that she escape death. And this has been passed by law-makers for no other reason than that such a grievance, provoking to rash anger, is required for excusing a father, so that he may not spare his own daughter. But since this statute is not to be found among the laws about husbands, the manifest difference between the two, because of the husband's excessive readiness to seize a suspicion and fly into a rage against his wife, is plainly revealed.

Nor is mere suspicion a sufficient ground to diminish the penalty for a husband who kills his wife after an interval. This is evident from the very authorities excusing him in such a case, whenever the adultery is proved either by the confession of the wife or by other proofs, so that she can be said to be convicted of it. [Citations.] Bertazzolus says: "I have seen the matter so regarded in the contingency of such a fact, and the husband has been excused who had killed an adulterous wife, not found in the very act, but whose adultery was really and truly existent and was quite plainly proved." Hence it is plain, from these very authorities adduced by his Honor, that the husband who kills his wife after an interval is not excused because of mere suspicion, or because of an adultery case which is still pending judgment, and which he himself had brought.

[excviii] In law, also, is his assumption proved to be without foundation, which places on an equality [first] vengeance taken immediately, that is, in the very act of taking the wife in adultery, or in acts immediately preparatory, which lead him to such a legitimate belief; and [secondly] vengeance taken after an interval, even when the adultery is evident from such proofs as render it perfectly clear. There are many authorities who urge the diminution of the penalty for the following reason which they give—that the sense of injured honor always keeps urging and provoking to vengeance, and that a wife may be well enough said to be taken in adultery when she has either confessed it or been convicted of it. And these authorities have been collected with a full hand by his Honor, and I myself recently pointed out one of them. But the contrary opinion is the true one and is accepted in practice. To this fact the most distinguished and most skilful practitioners of our time in criminal law bear witness. These are [first] Farinacci, where, after he has first learnedly answered the reasons and authorities adduced to the contrary, he concludes that he undoubtedly believes so as to the law in the case, and counsels that it be so held, unless we wish to err; and [second] Canon Raynaldus, who also filled the office of Procurator of the Poor with the highest praise, and so it may well be believed that he was very strongly inclined toward mercy and commiseration, and that he therefore adhered to this opinion in the mere zeal for the truth. And he declared it to be the truer and the

more advantageous to the State, and said that one should not depart from it in giving judgment. [Citations.]

But even if the conflict of authorities might in some manner favor the diminishing of the penalty for the Accused, if there had been excess merely in the matter of time; yet he is still to be considered as inexcusable, so that he can not escape the ordinary penalty, since so many qualifying circumstances are present which increase the crime; and any one of these is punishable with death.

To this end we should first consider the assembling of armed men,⁴⁰⁹ which is so very injurious to the public peace, and constitutes the crime of "conventicle." In the Banns, chapter 82, this is punishable with the death of its author. It is also declared that it is enough to establish this crime if four⁴¹⁰ armed men are assembled. This had been formerly [cxcix] prohibited under the same penalty by the seventy-fifth Constitution of Sixtus V, of blessed memory, which had raised it to the crime of rebellion, for whatever reason it might be done. Spada proves this fully, asserting that it should generally be so understood in all cases in which the assembling of men has been prohibited.

To escape or evade this capital penalty, it is not a relevant excuse that a husband may kill an adulterous wife by armed men brought together. For, however it may be when a husband wishes to kill his wife taken in adultery, and is afraid that the armed adulterer can resist him, and that he may have servants for his aid (in which case he himself can not take vengeance otherwise than by calling together helpers, as Caballus advises); yet in the case of vengeance taken after an interval, and while the wife is under the power of the judge,⁴¹¹ and on the mere suspicion of adultery, such convocation of armed men can not be said to be at all permissible. For the seventy-fifth Constitution of Sixtus V, of blessed memory, prohibits such assembling even on lawful occasion, as a disturbance of the public peace. [Citation.] And so it is much more to be prohibited and much the rather to be expiated with the ordinary penalty both of the Constitution and of the Banns, since it was made for an illegal and damnable end, namely to kill his wife, and his father-in-law and mother-in-law along with her. This is rendered plain by the assertion of the very authorities who excuse from the ordinary penalty a husband who takes vengeance after an interval. And indeed the path of private vengeance, which is hateful to the law, would be strewn all too broadly if, after the husband had chosen legal vengeance²²² and had neglected to avenge his pretended injury in the act of seizing his wife in flight with the pretended lover, he should be excusable in taking vengeance after an interval with all security, by means of armed men, and in killing her while entirely off her guard, and under the power of the judge, without the slightest risk to himself.

This is true in spite of the response which might favor him, that he neglected to take private vengeance because he was unarmed, and the wife was found in the company of the Canon, who was a bold, sturdy man.²⁹ The husband should impute it to himself if alone and unarmed he was pursuing his wife, fleeing with the lover. For then he could take associates with better right, and [cc] fully armed could pursue her; and in such a case his assembling of men would be somewhat excusable. But this is not so when he takes such awful vengeance after an interval. For if we consider the reason why a husband killing an adulterer or his wife is punished with a milder penalty according to the quality of the persons, if the vengeance follow on the very act—namely, rash anger, which can not be restrained—the assembling of armed men to do that after an interval is plainly revealed to be illegal. For rash anger would cause him to expose himself to the risk of resistance by the adulterer, who is not accustomed to approach unarmed. Because of this risk the penalty is diminished, since it shows that the husband carelessly exposed himself thereto, because of the violence of the anger which blinded him. This is [not] the case in vengeance taken after an interval, taken with all forethought and by means of armed men, so that the husband can not be afraid that any evil will befall himself in carrying it out. Such preparation is quite repugnant to rash anger, which can not be restrained, and from which excuse is drawn. [Citation.]

The second qualification that increases the crime results from the kind of arms⁴¹³ with which the murder was committed, for these were prohibited by the well-known decree of Alexander VIII, of sacred memory. This was not merely for the carrying, but even for the keeping, introduction, or manufacture of them for any cause whatever, even under the pretext of military service or the execution of justice. Hence they would be all the more prohibited [when carried] for the purpose of taking such impious and awful vengeance by the destruction of an entire family.

Nor is the carrying of arms in such a case to be confused with the main crime of murder; because when a greater penalty might be imposed for the former, as when excuse for the killing is drawn from injured honor, the carrying of the prohibited arms comes to be punished with the ordinary penalty. [Citations.] Nor are the authorities adduced to the contrary worthy of attention, for they hold good in the circumstance of murder done in self-defense or because of provocation in a quarrel. [Citation.] Still further, these are not applicable because they do not speak within the bounds of the Constitution, which so distinctly [cci] prohibits such arms. For Policardus speaks of the *Regula Pragmatica* which takes for granted the qualifying circumstance of the crime of treachery from the kind of arms, and he asserts that

this order ceases in murder for self-defense, or on provocation in a quarrel, when committed with the said arms. But this judgment differs by the whole heaven from the sanction of our Constitution; because the latter was issued for the very purpose of entirely exterminating so pernicious a kind of arms.

The third qualification likewise increasing the crime is murder committed because of a lawsuit;²⁶¹ for by the well-known decree of Alexander VII, of blessed memory, this was increased to the crime of rebellion and *læsa majestas*,²⁶² punishable with death and the confiscation of goods. This qualifying circumstance as regards the slaughter of Pietro and Violante can not be denied; because the Accused had won a victory²⁶³ in the lawsuit. And hence the offense should [not] be said to have been committed because of just anger for injury inflicted upon him; [first] by the pretense of birth, which was revealed after the marriage had been celebrated, in order that they might break the marriage contract; [second] by the publication of pamphlets¹⁰⁹ greatly to his injury; and [third] by their conspiracy in the flight of his wife to the injury of the honor of the Accused and of his entire family. They claim that since this cause for avenging the injury is graver than that arising from the lawsuit, the murder should be attributed to it, as more proportionate thereto.

But the victory²⁶³ he obtained had regard only to the actual possession of the property while the lawsuit was under appeal.²⁶⁴ And the parents were still pursuing this suit,²⁶⁵ so that that cause continued and could not be said to be extinct. The injury, indeed, from whatever different causes it may be claimed to have arisen, really came from this same lawsuit. And this had regard both to the pretense of birth revealed, and to the insults contained in those pamphlets¹⁰⁹ concerning the meagerness of the family affairs (which was quite the contrary of the boasted riches, in the hope of which the marriage had been made), and concerning the ill-treatment which the parents of the wife had suffered in the home of the Accused. For by this marriage agreement food was to be furnished them.⁹³ Still further, as to any conspiracy in her flight, much less as to any complicity in her pretended adultery, we have no proof at all. And so the cause of hatred conceived because of the lawsuit kept always urging him, and it does not redeem the criminal from the penalty inflicted by the decree of Alexander, because the suit might have been injurious to the Accused, either in his substance or in the manner. For this indeed presents such a cause as is always required in [ccii] premeditated murders. Nor does it exclude the qualifying circumstance of the lawsuit, and indeed confirms it; since it is explicitly presupposed that injustice had been committed. Otherwise an opportunity to take private vengeance would be permitted, which in all law is forbidden, especially when a lawsuit is going on; because then the

majesty of the Prince²²⁰ is insulted, as was proved in my other information, § *Accedit ad exasperandum.* [Cf. p. lxxviii.]

The fourth and, indeed, a very grave qualifying circumstance is drawn from the place in which the crime was committed, namely in the home²²¹ of those slain. It was also in an insidious manner, by pretending the delivery of a letter sent by Canon Caponsacchi.²²² For one's home should be the safest of refuges to himself, as was proved in our other information, § *plurimum quoque.* [Cf. p. lxxix.] The manner indeed savors of treachery, as is proved not merely by committing murder under the show of friendship, but also at a time when the power and obligation of special caution in the one slain had ceased. [Citation.] And this is far from doubtful in our case, for the wretched parents could have had no such apprehension from the Accused, who was staying in his own country.

To these is added a fifth very grave qualifying circumstance, drawn from the place with respect to the very wretched wife. For she had been imprisoned at the instance of the Accused, and was detained in the home of her parents as a prison with the consent of the Abate,²²³ his brother; and hence she was under public safekeeping,²²⁴ which it were wrong for the Accused to violate without incurring the penalty of *læsa majestas.* [Citation.]

This very grave qualifying circumstance, which increases the crime, can not be avoided by the dual response given by his Honor; first, that we are dealing with no prison properly speaking; second, that one giving offense, or killing in prison, is excused on a just plea of injured honor. Neither of these excludes this qualifying crime; for the unsuitability of a prison would be considerable if we could defend a violation of it made by one in prison and so to avoid his own injury, but if it were otherwise when we were arguing in his favor for avenging an injury to himself in a home [cciiii] assigned as a prison.²²⁵ The plea of injured honor can help one only if the offense in prison follow in self-defense under the very impulse of rash anger. In such circumstances the authorities adduced by his honor would hold good. But this is not so in excusing vengeance taken after an interval upon one imprisoned even at the instance of the slayer. For then the qualifying circumstance of the place greatly aggravates the crime, as it is indeed injurious to the public safekeeping and involves treachery. [Citations.]

It is therefore very evident that the murders committed by the Accused have many qualifications mingled with them, which greatly magnify them. And however far the opinion has weight, which urges the diminution of punishment for one killing an adulteress after an interval, and however much the pretended adultery may be declared to have been proved in the manner required to gain such diminution, even by all those in favor of the milder judgment, still this penalty

because of these qualifications would have to be increased and the ordinary penalty of the *Lex Cornelia de Sicariis* in its entirety would have to be demanded. And therefore it seems superfluous to argue about the kind of torture, since in view of these very urgent proofs, of which I understand there is no doubt, and in view of the well-known powers granted to the Most Illustrious Governor, it is quite within limits that the crime should be punished with the ordinary penalty, even if the qualifying circumstance of special atrocity were not present, so that the penalty should not be increased on that account.

But such a qualifying circumstance is not wanting here, as it results indeed from the treacherous manner and from the charge of *læsa majestas*,⁴²⁰ which is provable in our case on three grounds; namely offense committed during a lawsuit, the assembling of armed men, and the violation of public safekeeping, because of the home assigned as a prison. For according to the Apostolic Constitutions, the crime would be raised to that degree upon the basis of the first and the second; and there should be no doubt as to the power of the Prince to do so. [Citation.] Spada asserts that in such a case, so far as all the effects of law are concerned, it should not be considered a matter of controversy that the qualification of special atrocity, which is in agreement with such a crime, is to be revoked. And in our very [cciv] circumstances Spada gives this opinion in demanding the torment of the vigil.

Nor can that qualifying circumstance of the person concerned, so far as it is proved, stand in the way of such infliction of the torment of the vigil, which does not allow the death penalty upon a nobleman⁵²⁵ to be made worse, as is accustomed to happen in very atrocious crimes (because noble blood should not be degraded by such increase of penalty which adds infamy). But for this purpose merely the nature of the crime is considered, and not the quality of the person, which would hinder the execution of a penalty carrying with it such infamy. Otherwise the torture of the vigil never could be inflicted upon noblemen, priests, and men in religious office upon whom an infamous penalty can not be inflicted. But nobility affords no privilege in the manner of torment,⁵²⁶ especially in very atrocious crimes. [Citation.]

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc and of the Apostolic Chamber.

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case with qualifying circumstance.

*For the Fisc, against Count Guido Franceschini
and the others.*

Response of the Lord Advocate of the Fisc.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

To the Account of the Fact, and Grounds in the Franceschini Case.

[Pamphlet 15.]

The splendid statue of Nebuchadnezzar fell because it was not firm on its feet. So fall to ground those imagined and forced suppositions concerning the origin of the present execrable murder, which the Anonymous Writer in his printed pages [Pamphlet 10] has tried to insinuate into the dull heads of the crowd.⁴¹ This murder was committed here in Rome upon three wretched and innocent persons, by Guido Franceschini, assisted by four men who were armed with prohibited arms,⁴¹³ who were brought together for that purpose by the influence of money, and who were kept insidiously for many days at his expense. [These pages claim that] the crime arose from justly conceived anger; [first], because eight months earlier⁴¹² Guido had discovered Francesca Pompilia, his wife, sinning against him in his own house at Arezzo, and [then] because she had fled in company with Canon Caponsacchi of the same city back to Rome to place herself again under the protection of Pietro and Violante Comparini, who had raised her as their daughter; and [thirdly] that the suspicion had also grown upon Guido that in her precipitate journey she might have broken with the Canon her marriage obligations, since certain love-letters⁴¹² were found upon her, from which he unreasonably deduced her adultery, and he supposed that the said Caponsacchi was condemned as an adulterer to a three years' banishment at Civita Vecchia.²⁷¹ And these pages try, under the pretense of injured honor, to render Guido's crime less grave and to excite compassion, no less in foolish persons⁴¹ than in the hearts of our most religious judges, for the purpose of disposing them toward a milder penalty and one out of keeping, according to the laws, with the quality, form, and circumstances of this crime. And this in substance is all that is claimed by the author of the pamphlet entitled *Notizie di fatto, e di ragione nella Causa Franceschini*. But they are indeed very much at fault in their account of that tragic history, which had a different beginning and an occasion independent of the imagined ground of honor. In that pamphlet it was presupposed [ccviii] all too bitterly, that Guido's honor had been injured by his wife; whereas she always preserved her sense of shame and had well observed the laws of conjugal honor, as is plainly shown in this present article.

That this sad catastrophe, this slaughter of an entire family, did not proceed (as the Anonymous Author claims in his pages) from the pretended sense of injured honor, but from damnable greed,⁴⁶ one can very clearly see by considering the fact that for this very object the

unfortunate marriage with Francesca Pompilia was entered into by Franceschini.⁷⁶ For it was taken for granted that after the death of her supposed parents she would surely fall heir to a considerable property.⁷⁷ All the more ought we believe that the crime was committed because of hatred arising from the three lawsuits then pending;⁷⁸ that is, two in the civil courts and a third in the criminal courts. One of these was as to the legitimacy of the parentage of Francesca Pompilia, the wife, and the nullification of the dowry-agreement,⁷⁹ and was brought by Pietro in the Tribunal of the Sacred Rota.⁸⁰ The second suit was for divorce,⁸¹ and was brought by the said Francesca Pompilia before the Vice-Governor.⁸² The third is a criminal suit, as to the pretended adultery,⁸³ which is still pending in the Tribunal of his Excellency the Governor;⁸⁴ this latter was brought under the very impulse of greed,⁸⁵ to gain the entire dowry. Since this fact was conclusively evident in the case introduced by the said Franceschini, he was deceived in this hope of gain by the failure of the proofs, which the defense caused to vanish utterly, as they could do by means of the wife. Hence he broke into an excess so tragic and so deplorable as to reveal clearly the tricks and frauds practiced for the purpose of bringing about that marriage. Here then are the plain proofs that this is the truth.

Guido Franceschini was staying at Rome in idleness, out of the service of a certain Cardinal,⁸⁶ without a soldo,⁸⁷ by which service he had provided for himself up to that time. His usual loafing-place was in the shop of certain women-hairdressers,⁸⁸ where he often announced his intention of setting up his house with some good dowry. He also boasted of the grandeur of his country, his birth, and his property. By his promises he induced this woman to find him a chance for such a marriage, and she informed him of the opportunity in the said Francesca Pompilia. The latter was then esteemed to be the true and legitimate daughter of Pietro and Violante Comparini. He set about this enterprise with the aid of his brother Abate Paolo, using the astute prudence⁸⁹ with which the malign serpent advanced his designs in [ccix] Paradise to subvert Adam into disobeying God's precept and into eating the forbidden fruit; for [Satan] considered the matter in this way: "If I wish to assault the man directly, who is so strong and so resolute, he will turn and give me a sure repulse. It is therefore better that I first tempt the woman, who is of a fickle nature and soft-hearted." And he made his first attack upon Eve; because when he had gained his point that he might have her, by her means it would be easier for him to win over Adam. "For he first attacked the mind of the weaker sex," are the ingenious words of St. Hilario.

And so for this purpose did the said Guido devise the marriage with the knowledge of his brother, Abate Paolo, and likewise to this point he succeeded in it. For he avoided talking with Signor Pietro⁹⁰ about

the marriage, by whom it would probably have been refused, and wished first to tempt Violante, his wife. Because by gaining her he would the more easily overpersuade her husband to give his consent. Nor was it difficult⁸⁰ for him to astound the woman, because he knew how to impress her very well with the thought of the grandeur of his country, of the first-rate nobility of his birth,⁸¹ and of the great income from his patrimony, amounting to 1,700 scudi.⁸² And he gave her an itemized account of it written with his own hand. She was enchanted thereby and, without getting any further information about the matter, she was able to persuade her husband and to extract from him his consent to it.⁸³ This proves what we read written in Proverbs: "A wife takes captive the soul of her husband." He speaks this of Mordecai who availed himself of Esther, when he wished to placate the anger of Ahasuerus against his people; of Joab, who used the services of the woman of Tekoa when he wished to soften the anger of David against his son; and of the Philistines of Timnath, when they wished to gain from Samson the secret of the riddle proposed to them at the marriage feast.

The credulous but deceived woman so cajoled her husband⁸⁴ that she at last induced him to sign the marriage agreement providing for a dowry of 26 bonds⁸⁵ and, at the death of the said Comparini, for all their possession,⁸⁶ amounting, as the Anonymous Writer acknowledges, to the sum of 12,000 scudi.⁸⁷ And, for the purpose of making the said Franceschini guardians of the said property even during the life of the Comparini, they had to give up even the income of it. This property consisted of numbers of profitable and well-situated houses, and of bonds.⁸⁸ The Franceschini also assumed the obligation [ccx] to take the said Comparini to the city of Arezzo, and there to feed, clothe,⁸⁹ and provide them such service as they would need. This promise was made not without the hope that on account of the insults and sufferings which they would have to bear their death would be hastened. And thus Guido would become the absolute master of their property.

After having signed the said agreement Pietro absolutely refused to go on with the effectuation of the marriage⁹⁰ of the said Francesca Pompilia, with the abovesaid Guido, of whom he had had few good reports;⁹¹ and these were far different from the pretended riches and vaunted nobility. Hence one may well say of him what Persius concludes in his fourth Satire: "See what has no real existence; let the rabble carry off their presents elsewhere. Dwell with yourself, and you will know how meager your furnishing may be."

At any rate, the said Guido joined the said Violante, whom he had imbued with his flatteries and endearments, spurning any further consent of Pietro by keeping him in ignorance of it. And without the knowledge of the latter, Guido contracted the marriage with the said

Francesca Pompilia in the face of the Church.⁸⁵ And he evermore discloses by this act, which shows so little reverence to the promiser of the dowry, his own greed,⁴⁶ not merely for the amount which had been assigned to him in the marriage agreement, but also for the rest of Pietro's property. For he felt sure that after Pietro's death the property, by the entail⁸⁸ of the ancestors, would necessarily fall to the said Francesca Pompilia, who was already his wife.

When, after a few days, Pietro found out⁸⁷ that the marriage had taken place, though he reproved the deed vigorously, yet because what is done can not be undone, and by means of the cajoleries of Violante his wife⁸⁸ and the interposition of another Cardinal, whom the Abate, Guido's brother,⁸⁹ served, the poor old fellow was constrained to drink the cup of his bitterness. And he came, as it were by force, after many months to the stipulations of the dowry agreement. He quickly began to feel the effects of Franceschini's trick, since Guido had scarcely a single soldo of his own to pay the first expenses of that marriage agreement. Hence, to supply these, he was obliged, against the wish of Pietro to free from entail five of the bonds, or more, by the authority of the Auditor of the Most Illustrious Governor, and to sell them for [ccxi] meeting these expenses. Hence one may see clearly that the primary object of Franceschini in this proceeding was to trick Pietro, and Violante his wife, and their poor child, to enrich himself with the property of others.⁴⁶

He can no longer deny the fraudulent pretense of vaunted riches of the Franceschini in the note written in his own hand⁹² and given to the Comparini. And indeed the Anonymous Writer confesses it openly. For, in order to free Abate Paolo from complicity in that trick, the latter pretended that he took Guido his brother to task roundly for the alteration of the said note. The said Comparini very quickly found this out. For as soon as they had gone to Arezzo they learned that the property of the Franceschini family was very slight. And such were the miseries and abuses⁹⁵ that the Comparini had to suffer in victuals and in harsh treatment that they were obliged to return to Rome¹⁰⁰ after a few months;⁹⁸ for they were locked out of the home and had to go to the tavern to lodge; and these abuses were for the purpose of shortening their lives, either by their sufferings, or the fury caused thereby. And this fact is very evidently proved by the rent-rolls taken from the public records of the city of Arezzo. From these it is shown that the said Guido did not possess a single dollar's worth of the settled property mentioned in the said note. It is also untrue that he and his family enjoyed the highest rank of nobility in the city, because, from other extracts drawn from the public records of the city, it is evident that his family is of only secondary rank.⁹⁵

The abovesaid crafty and fraudulent methods of dealing, which came to light long before the murder had followed, and which became known in this Court and in Arezzo, can well show that greed¹⁰⁶ was the origin of this premeditated slaughter (which was put in execution in such a horrible manner, as is notorious) and not the pretended ground of injured honor. For, according to common opinion, Abate Paolo, no less than Guido his brother, had worked the tricks¹⁰⁷ exposed as above. And by men they were suspected of subterfuge and craft, so that this made them more sensible of injury than anything else. Hence they could no longer boast the grandeur of their nobility and the affluence of their riches, which they had spread abroad on the lips of the crowd. And every one avoided having anything to do with them,¹⁰⁸ as persons of bad faith and as [ccxii] usurping a glory to which they had no real right.

The greediness of this self-interest became greatly inflamed; so that in these Franceschini brethren one may see the common axiom verified: "Craft is deluded by craft."¹⁰⁹ That is to say, Violante was urged on by remorse of conscience¹¹⁰ and by the abuses and injuries received in their house, and was constrained by her confessor¹⁰⁴ at the time of the Jubilee¹⁰² to reveal to Pietro, her husband, that the said Francesca Pompilia was not their daughter, but was of a false birth.¹⁰³ And this seems very probable in view of the age of 48,¹¹¹ which Violante had reached, when she pretended to be pregnant with her; because in the fourteen years, during which she had lived in lawful matrimony with Pietro, she had never had children. Also, by witnesses then living,²⁶¹ she could afford conclusive proof of the pretense of the birth. And when notice of that had been given to Abate Paolo, that he might come to some compromise over the annulling of the dowry contract for the entire patrimonial property, he spurned the kind offers made to him through the mediation of friendly persons and refused every means of peace. Then a warning (as to the falsity of the said birth and the illegality of the dowry contract) was served on him by Pietro before Monsignor Tommati.²⁶² And conclusive proof of the birth was given by six witnesses,²⁶¹ who were examined before the judge with questions offered in behalf of the said Franceschini. Yet the same judge saw best to forward the case during the mere immediate possession, by continuing to the said Francesca Pompilia the quasi-possession of her parenthood.²⁶³ Nevertheless, an appeal was taken from his sentence,²⁶⁴ and it was committed to the Sacred Rota, before Monsignor Molines,²⁶² where it still hangs undecided²⁶⁵ as to the principal point of the pretended parentage and the nullity of the dowry contract. For righteous judgment in such a tribunal the judge doubtless awaited for conclusive proofs of the said pretense of birth. The nullity of the dowry contract would none the less be decided, because it had made declaration that the

said Francesca Pompilia was their daughter. And with this falsehood the advantage which the Franceschini had obtained for their own selfish gain by such tricks would cease.

All this is proved by the reflection that the trick of Franceschini was made public, not merely in Rome, but in Arezzo, [ccxiii] and that he also was deluded by a similar artifice because of the proofs already made, while judgment was pending, that the said Francesca Pompilia was not the real and legitimate daughter of the said Comparini. On the ground of these far-fetched suspicions, Guido made pretense of a reason for maltreating her with insults and blows, and more than once he provided himself with a sword¹⁰⁴ and fire-arms to take her life. He did this to take vengeance upon her for his own trick, by which he had been deluded.¹⁰⁵ Therefore it was quite right for the poor wife, who was of the tender age of sixteen years and a stranger in the place, to avoid the rage of her husband at different times by fleeing for protection to Monsignor the Bishop,¹⁰⁶ and to the Governor,¹⁰⁷ or Commissioner of the City, that they might put some check upon the cruelties she was suffering. And although these persons by their interest in the matter succeeded for the time in putting a stop to the threats, yet the poor intimidated wife always passed her days shut in a room.¹⁰⁸ And her fear was greatly increased because she saw that the said Guido had made a mixture of poison¹⁰⁹ with which he threatened he would take her life without the uproar attendant on the use of arms; and thus he would be the surer of his crime going unpunished. Now if, even at a time when no shadow of suspicion of dishonor had fallen, the husband was contriving the death of his wife, the Anonymous Writer might well abstain from soiling his pages for the purpose of proving that the slaughter of those murdered had had its origin in the impulse to repair offended honor. For his pages would have had much better foundation if he had consulted the truth, namely that these crimes had arisen from deluded self-interest.¹⁰⁸

The poor wife, in her agitation over these difficulties that we have told, had nothing else to do but think of finding refuge from the death she feared. And when her mind was somewhat sharpened by its vexations, she intrusted herself to the Canon Conti,¹¹⁰ who is closely related to the Franceschini, and declared to him her miseries, her perils, and her just fears (although they were not unknown to him), in order that he might try to give her consolation by placing her life in safety. He was touched with living compassion and was moved to free her therefrom by pity for the grievous state in which she was. And he well knew that there was no other escape than flight from the home of her husband, according to the saying of the poet [Virg. A., III, 44]: "Alas, flee the cruel earth, flee the greedy shore." But not being able to give her aid in this affair, [ccxiv] he suggested to her that for putting

the matter into execution, there was no better person to the purpose than Canon Giuseppe Caponsacchi,^{28 25} his friend and intimate, whose spirit had stood every test.²⁹ And when Conti had spoken of it to him, although Caponsacchi saw difficulty in aiding the desire of the young woman, because he did not wish to incur the anger of the Franceschini, yet at last the impulse of charity and pity¹⁴⁵ prevailed upon him to free this innocent woman from death. And when his readiness for the attempt was reported to her by Conti, she did not fail to inflame him with more messages and letters,²⁴⁷ even containing alluring endearments, for the effecting of her escape. Yet she also kept during all this time her constant desire of not violating her marriage-vow, since in some of these letters²³² she praises the Canon for his chastity, and in others reprobates him for having sent her some rather improper octaves. She also warned him against degenerating from the good behavior, on which she had congratulated herself and had planned with him the flight.

While her husband and the whole household were asleep, both of them, with the assistance of the Canon Conti,³⁵ set out upon a headlong journey¹⁹⁴ by post, without losing a moment's time, except for changing horses; and they arrived by night at Castelnuovo. And although the host had prepared a bed for rest, nevertheless they did not avail themselves of it. For Caponsacchi was always solicitously watching²¹⁴ to see that the driver prepared other horses,²¹⁹ to continue the journey to its end. Nor did the host of that tavern, when cross-examined in the prosecution for flight, ever dream of bearing witness that the wife and Caponsacchi had slept together²¹⁵ in the bed that was prepared, even though Franceschini, to his own dishonor, had published the contrary, that he might, by the pretense of injured honor, throw a false light upon the true grounds of the murders committed by him.

In the meantime her husband arrived. When his wife saw him, did she, timid as she was,²²⁴ shrink back? Did she acknowledge herself guilty of any sin, or of any wrong done to him in guarding her purity and modesty? No! But all on fire, though she was at the tender age of sixteen years, as I have already said, the constancy of her own honor rebuked²²⁸ him for the tricks and abuses¹²² which he had employed, and for the threats and blows he had very often given her, and for the poisonous drugs¹²³ he had prepared to take her life. And [she declared] that she had been obliged to do as she had done, to find an escape by flight from graver peril, [ccxv] and to go back to the pity of the Comparini, who had raised her as their daughter; and that she had always been careful to keep her wifely honor intact. The same rebuke was made by Caponsacchi,²²⁰ who during the flight had religiously observed the limits of due modesty.

What did Franceschini answer? What did he try to do, although he was armed with a sword²⁰⁴ against his defenseless wife and against

Caponsacchi, who had with him only a little dagger? ²²¹ Nothing, indeed! according to what witnesses who were present deposed; for he stood convicted by the just remonstrances of his wife.²²⁸ But what did he do? He gave up all vengeance, which by right of natural law, or much more by civil law, he might have taken for that;²⁰³ and, as the Anonymous Writer goes on to boast in justifying him for this execrable crime, he implored the arm of the Law²²² and had his wife and Caponsacchi arrested by the authorities²²⁸ of the place. And at his own instance they were conducted as prisoners to the prisons²⁵⁵ of the Most Illustrious Governor of Rome, before whom Guido charged them with flight. Then, not content with this, he brought forward that other charge of supposed adultery committed with the said Caponsacchi.²⁶⁹ He also outdid himself greatly by making noisy petition to the Supreme Pontiff²⁸⁰ for their punishment, and the latter sent back²⁸¹ his entreaties to Monsignor the Governor. He was brazen enough to demand, with a new complaint, that his wife should be declared an adulteress and that to him, according to law, should pass all the gain of the dowry.⁴⁶ This in substance clearly proves that he did not insist on vengeance for the reparation of his honor, which he himself had passed by, but he did all this for the sole object of gain, that is to win the dowry.⁴⁶

What efforts, what exclamations, what diligence did Franceschini and Abate Paolo, his brother, not use to have the wife declared an adulteress and to gain the desired lucre?⁴⁶ Monsignor, the Most Illustrious Governor,²⁷⁰ knows it, who endured with all forbearance their passionate pressure upon him. Signor Venturini,²⁷⁰ judge in the case, knows it. And all the other judges and notaries of the Court, who were nauseated by their importunity, know this very well. Then since judgment could not in any event fall according to the designs of the Franceschini, as there was no proof in the trial of any offense, either in the wife or in the said Caponsacchi, the most Religious Judges, who in prudence were judging rigorously [ccxvi] (for the purpose of giving some satisfaction²⁷⁹ to the Franceschini brothers in their strong insistence, rather than because of the obligations of justice), banished the said Caponsacchi to Civita Vecchia for three years.²⁷¹ Caponsacchi straightway obeyed this sentence and has never left the place assigned him.²⁹⁸ The case was left undecided as regards the wife who was placed in the Nunnery of the Scalette as a prison.²⁷⁶ Then when there was some question as to her pregnancy,²⁸³ with equal prudence, she was removed from the nunnery by the order of the Most Illustrious Governor; for it was not decorous that she should give birth to a child there. And with the consent of the said Abate Paolo²⁸⁸ she was placed in the home of the said Comparini under security of 300 scudi to keep it as a secure prison.²⁸⁴

On this point the Anonymous Writer disputes too bitterly what was written learnedly by the Fisc, and claims that the consent of the said Abate Paolo had not been given. But the great and incorruptible integrity of the Fisc is known to everyone; because of which he would be unwilling to give his word in writing for what was not evident on the surest proof. Yet the fact of Abate Paolo's consent is plainly proved, since he in person so agreed with Monsignor, the Most Illustrious Governor,²⁷⁰ and with Signor Venturini,²⁷¹ the judge, jointly. And he exacted from Pietro Comparini the obligation to supply her with food²⁸⁷ without any hope of recompense. And this was so carried out, although the quality of the Comparini did not deserve so indecent a rebuke, on account of having been too indulgent with them.

With like bitterness it is denied that the said Abate Paolo had power of attorney from Guido, his brother, enough to give such consent; because, in making such a provision, Monsignor the Governor had no need of the consent of the parties. And, even if he had wished to show Abate Paolo such courtesy and urbanity, the Author should not reply thereto with such incivility, in criticizing the judge for having done wrong because of the lack of that power of attorney. For by such procedure [Abate Paolo] proves that he wished to trick also Monsignor the Governor into consenting to a thing beyond his power. And he rests convicted of this, because the said Abate Paolo was the manipulator of all they did, nor was a straw moved without his assistance.⁵⁰ And he was well provided with abundant power of attorney by his brother, [**cexvii**] wherefrom he had the fullest authority to do as if he were the very person of his brother, with a proviso of after confirmation, the efficacy of which everyone knows. And this is confessed even by the Anonymous Author, since he asserts that Guido at his departure left the entire conduct²⁵⁶ of his case to the Abate, his brother. But one may well see with what object he denies the said consent, that is, in order that he may more bitterly make pretense of the complicity of the Comparini in the pretended dishonesty of Francesca, who had been guarded by them as a daughter. This would seem very improbable if he should once admit the consent of the Abate.

No less rancorous is the assertion made by the Anonymous Writer that Lamparelli laid out the money to provide Pompilia with food while she was in safe-keeping.²⁸² Nor was Lamparelli reimbursed by the deposit in the Office, which had come from the money found on her and on Caponsacchi, when they were arrested at Castelnuovo, which was supposed to have been stolen from the husband. But the 48 scudi, which the wife confessed to have taken away from him, were fully restored to the said Abate Paolo, as is proved by his receipt, made during the trial. The rest of the money was conclusively proved to belong to Caponsacchi. And as soon as Abate Paolo received the

money, for which he continually clamored, he left Rome to take part in the planning of that notorious murder,²⁰⁴ which followed a little while later.

But there had previously been given notice, at the instance of Francesca Pompilia before Monsignor, the Vice-Governor,²⁰⁵ of a suit for divorce²⁰⁶ and for the recovery of the dowry,²⁰⁷ which had been spent. This was very bitter to the Franceschini, because in that lawsuit conclusive proof would be made of their subterfuges, their cruelties, their threats of poisonous drugs¹³³ that had been prepared; of which the Canon Conti,²⁰⁸ who was the mediator in that flight, had not been ignorant. And it is public talk and report throughout Arezzo that he died about a month ago²⁰⁹ under similar suspicious circumstances. Hereby ceased all hope, which the Franceschini had had from the beginning, of gaining the entire property of the Comparini.²¹⁰ And from this every sane mind may see and know what is the true root of such rash and pitiable murders; whether it is injured honor, or scandalous and detestable greed and cupidity.²¹¹ From this arose the hatred in the lawsuits brought and still undecided, which drew even greater dishonor upon the said Franceschini, and when decided would be for their ruin.

[ccxviii] In vain therefore this Anonymous Writer and his other defenders wear themselves out in exaggerating the plea of injured honor. For then that which had no true existence would have been taken from Guido by his wife. This was fully proved in the arguments made for the Fisc, in answering those letters,²¹² from which Guido drew his strongest proof. On the contrary, Franceschini has by his own deed renounced all right to repair his honor,²¹³ since he did not avenge it at the time of overtaking her in the said inn of Castelnuovo. Nor does his excuse really help him—that he was unarmed, because he had with him indeed a sword,²⁰⁴ and possibly other concealed arms. For it is not probable that he would have been willing to go on following his wife accompanied by Caponsacchi, without being provided with arms. And this all the more because the fugitives also were unarmed and were provided merely with a little dagger.²²¹ But Guido preferred to choose the judicial road²²² and had them arrested by the police,²²³ and he demanded that the charge against them be pushed through to their punishment, even imploring the rescript of the Supreme Pontiff.²²⁰ He also laid his entreaties again before the judges in the case (this very well discloses his purpose, which was the unconquerable motive of all his acts) and made special insistence before them for the payment of the price of the honor, which he pretended had been taken from him. And would he not even have had his wife declared an adulteress for the sake of gaining the dowry?²¹⁶ If then he has, as one may say, demanded the price of his honor in the Courts, how can he be permitted to commit such awful murders for honor's sake?

For whenever a husband is permitted by reason of natural law, or even by the civil law, to kill his wife for honor's sake, this power and faculty ceases whenever the husband has renounced it by imploring, as above, the arm of the law. And these complaints that he made, and his recourse to the Pope,²⁸⁰ show the price he put upon his honor. And with these judicial proceedings he lost, without doubt, his right of private vengeance for his injured honor, which he might have carried out. And by this one tacit renunciation this right is extinct. [Citation.] For the Writer can not claim that the judicial action brought by Franceschini would not effect the renunciation of private vengeance [ccxix] for his honor, but that he could still employ the one or the other, and avail himself of whichever might seem better to him. For this is contrary to the text [Citation] which is stated as follows by the celebrated Canonist, Giovanni Andrea: "A choice can not gain both alternatives in seeking confirmation therefrom; even if the one is claimed to include that by which the man can attain the end of his intention. Therefore a man must chose one, and when it is chosen he can not turn to the other." And still clearer are the following words of the same authority: "The right to return to a second alternative shall not at all be allowed, when one seems to have renounced to choose the first and to profess that his rights can not arise therefrom."

But although this exception from every miscarried law might be judged permissible, every foundation of it would be destroyed by the utter lack of proof of an offense received in his honor; for there was no proof of it in the prosecution for flight. The Anonymous Writer strives to deduce that from the pretended love letters²⁸² written to Caponsacchi, which were denied by Francesca and were not proved to be her handwriting, either by her own acknowledgment or by her signature. One can not claim that she was convicted of it, nor that any legitimate proof of it resulted, as all judicial practice shows.

And even if without reason we were obliged to acknowledge that they were written by her, would it not be too bitter and too unreasonable an inference that from them arose the husband's motive for killing her because she had written them? No one of sound mind will be persuaded to pity the husband who has gone on to kill his wife for the sole reason that she had written love letters. For conjugal honor is offended neither by note, nor by pen, but only by acts of impure dishonor; and of this, in our case, every shadow of proof is lacking.

This is all the more true because the mere suspicion of dishonor ceases with a thought of the true motive, for which the letters were written;²⁸⁷ namely, by pretended demonstration of affection to allure this Caponsacchi to rescue her from imminent peril of death. Nor from this could she find any other escape than by flight; for she was always terrorized by the anger and hatred conceived by her husband for

feigned reasons. [ccxx] And therefore, as the love letters arose from that occasion they ought to be referred to it, and not to a dishonorable wish to smirch her conjugal faith to her husband. To the same cause, likewise, should certain conversations be referred, which she had had from the window with the said Caponsacchi in order to arrange the manner of saving her life, and not to give offense, nor to hazard her own modesty, nor the honor of her husband. Even the most chaste of women have used like artifices. We find in the Sacred Scriptures that Judith²⁰⁰ entrapped Holofernes in the same way, for the purpose of winning the liberty of her native land. And so it may be no less permissible for this poor woman, who was solely intent upon the security of her life, to allure Caponsacchi²⁰¹ by amatory letters to be a safe companion for her in her flight, and this without any stigma of immodesty.

Much less can an offense of his honor be inferred from the flight; because, as I noted above, this flight resulted from the cause declared. And one may see clearly that it was not for doing any injury to her husband. For the fugitives did not turn aside into unknown places,²⁰² but they journeyed precipitately along the consular road by post, without spending the night anywhere.²⁰³ And their journey was toward Rome, where the poor wife hoped that the Comparini, who had raised her as their daughter, would continue toward her those acts of love with which they had brought her up, even till the said marriage was contracted with Franceschini.

And all that is being reported that a driver testifies he had seen them kissing²⁰⁴ along the road has no legal foundation. For it rests merely on the word of a single witness of the lowest class, and he swears to matters that are quite improbable, because he had to drive the carriage with such rapidity as that with which the fugitives were following their journey. Hence it was almost impossible for him to look backward, or to see what they were doing inside of that covered carriage. And this is all the more so because his deposition is vague, nor does it specify whether the kisses were given at night or by day. But his deposition is rendered much more doubtful and improbable because, in such a swift journey as the carriage was making, it might chance during the jolting²⁰⁵ of it that the accident of their faces meeting casually would arise, and to him this might seem the act of kissing. This happens very commonly, even when one is making no such journey, according to the quality of the road and the rough ways which one finds. This makes his [ccxxi] testimony insufficient and doubtful enough or, even further, it is audacious and incredible.

Then as to the other point which the Anonymous Writer asserts too bitterly, namely, that when they arrived at Castelnuovo the innkeeper was ordered to make up only one bed for the repose of the fugitives,

and that they slept together.²¹⁵ The host, however, did not have the hardihood to swear, in his cross-examination, that they had slept together in it. This circumstance is excluded by the deposition of the wife as well as by that of Caponsacchi. Because their affidavits constantly affirm that neither of them went to bed for rest, but that merely the wife, who was worn out by the discomfort and suffering of so precipitate a journey, rested for a few hours seated in a chair; and that the bed was left arranged as the host had adjusted it; and it would have been found mussed, if they had slept in it. It is also proved that when Franceschini arrived at the said place he found Caponsacchi urging that the horses be harnessed for continuing the journey,²¹⁶ and no proof is given to the contrary. Nor can one justly pity Franceschini for his injured honor, which had been kept intact by the fugitives.

Likewise the title,²¹⁷ to which the same Writer appeals—that the decree of condemnation for Caponsacchi's banishment had been inflicted because of criminal knowledge,²¹⁸ to the injury of Guido's honor—has no real foundation; because this title was corrected as untrue, and not in accord with the proofs. Of this fact we may have as legitimate witnesses the very Governor himself, and all the judges and notaries of the tribunal who have any part in the criminal court. And if one will only give it due thought, the title of that case was placed there, just as a wine bush²¹⁹ hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good, and salable, and agreeable. Oh! by no means. For one may find the wine there to be sharp, and muddy, and of other inferior qualities. If therefore we read the documents and the proofs registered during the prosecution, by which the crime is proved, and not by the erroneous title, which can not offer a shadow of proof for the pretended criminal commerce, there is even less suspicion of immorality. And one can well understand that all proof was lacking during the prosecution, [ccxxii] from the mildness²²⁰ of the penalty inflicted, which does not at all correspond with the gravity of the crime charged. One can also see the impropriety of condemning Caponsacchi as an adulterer²²¹ while the cause against the wife was still pending,²²² because she could not be condemned while undefended.

But to remove every suspicion of this pretended adultery, I beg any dispassionate reader to reflect that the adultery could not have been committed in Arezzo, because to the guardianship of her husband was added that of the brothers, of their common mother, of the servant, of the relatives, and of the neighbors; yea, the voluntary imprisonment²²³ of the unfortunate child, who was always shut in a small room to guard her honor. Much less could adultery have been committed during the journey, as has been proved to be utterly unlikely, improbable, unproved, and far from the truth. Nor could it have been committed at

Rome; for it is well known that Pompilia was taken from Castelnuovo to prison,²⁵⁵ and from there was removed to the Nunnery of the Scalette,²⁷⁶ and then because of her pregnancy²⁸³ was consigned to the said Comparini, under the form of keeping their house as a prison with security of 300 scudi.²⁸⁴ Caponsacchi also was staying then at his place of banishment in Civita Vecchia. In this fact all suspicion ceases, since the consent of Abate Franceschini,²⁸⁸ who is so zealous for his brother's honor, as well as his own, concurred therein.

Nor can one restrain himself without strong exertion when he hears such exaggeration from the Anonymous Writer as that Caponsacchi left his prison to go in banishment to Civita Vecchia at a time when the wife was staying in the house of the said couple, as a prison, and that he lodged²⁹³ in their house. But he can not speak a more barefaced lie than that, because Caponsacchi has never been their guest, and as soon as he left the prison he went to the place of his exile; and he has faithfully observed his banishment without ever returning to Rome. Nor did the wife leave the nunnery before it was proved to Monsignor the Governor that Caponsacchi was staying in Civita Vecchia, as was established by the authentic testimony of the Chancellor of that district.

The said Writer, however, gives me even more room to blame his excessive boldness in stigmatizing the honor of Franceschini as sullied by his wife, by saying that as soon as Guido had ascended the stairs in company with his fellows, armed to commit this execrable murder, he looked about upon those walls,³²² which were all full of his insults, as if the said silent stones [ccxxiii] had known how to make contrivances of foolish thoughts to foment his inhumanity for so horrible a murder. Because for this he can give no other proof than that he was writing fancifully without any foundation. For Guido was indeed willingly dishonored; because to his other dishonors he added these disgraces also, even by his own wrongdoing. For it is made very clear above that the cause for which he committed the crime was not to repair his honor, which had been injured by his wife. But it was his unmasked tricks, the hoped-for lucre,⁴⁶ which had vanished, and the lawsuits still pending.

And why can he not bring some other no less convincing proof, if honor urged Franceschini thereto? And was not that honor sufficiently avenged by the death of his wife? Why imbrue himself straightway with the blood of Violante and Pietro,⁴⁰¹ who were not accomplices in the pretended dishonor? And why should he lay such plots through many days to procure the death of that kindly benefactor, because the latter had been moved by pity and had ministered to their aid in the said lawsuits? Upon that one there has never fallen a suspicion prejudicial to Guido's honor. For while the wife was in Arezzo he was staying at Rome. And when she was first married she was not fully thirteen

years old, and after her flight, when she had returned to Rome, we know that she continued under guard in prison, or in the nunnery, and then in the home of her parents, and at this time she was very near her confinement. Hence one can conclude truly that the motive of this murder was other than that of honor, and that it was his greed,⁴⁶ as was said, and the lawsuits,⁴²¹ as Franceschini himself confesses in his cross-examination.

Nor ought the declaration made by the said wife in the face of death be despised, since in the presence of many priests and persons who are quite trustworthy, even while she was constantly suffering from such severe wounds, she maintained and professed with greatest frankness that she had always lived chaste and faithful to her husband.³⁵⁵ And with a heart in fullest resignation to the Divine Mercy, she prayed pardon for every mistake she had committed to the disgrace of her husband. Nor in such a matter is it to be presumed that the one dying lies, at the risk of the eternal safety of her soul.³⁶² A person should also reflect that in this deed there occurs a special favor³⁴⁸ from the hand of the very Omnipotent, who caused the wife to survive for a few days, in order that she might [cxxxiv] make clear her own innocence and throw light upon the murderers; for without this the crimes would have gone unpunished. For during the same crime Franceschini had repeatedly commanded his companions to see if she were quite dead. And when they had taken her by the tresses,³²⁷ and had lifted her from the ground where she lay, they believed she was dead; because the poor wife, by natural instinct,³²⁹ knew how to feign it by her relaxation, as the delinquents confessed. And this mark of divine favor³⁴⁶ all the more verifies the declaration of the wife, which has been proved by the confession of those guilty of the crime.

I have left it for the last to discuss and refute what the said Writer pretends concerning Abate Paolo.³⁰⁵ But if he had to speak the truth, he might reasonably affirm that the Abate⁵⁰ had been the whole foundation of this scandal. For he had urged Guido on to the murders, and he had woven the whole plot, inasmuch as it was he who, from the beginning wished to attain, by dint of industry and trickiness, the marriage of the said Francesca Pompilia. It was he who had sustained the suits, both civil and criminal, and he who, under the name of a grandee and by boasting of their word of honor, had tried to extort a judgment by means of fine insinuations, by subterfuge, and by trickery; which was not right. It was he, who was very sensible of having been proved to be the man of guile, who had been deluded by his own trick.¹⁰⁸ Therefore this Writer had good reason to say that the faces of others served the Abate as mirrors by which to read his own evil courses, and not the lost honor of his brother.

I forbear to respond to what the Anonymous Writer has tried to have believed to the praise of Abate Paolo Franceschini, to excite greatly our pity; since the intention⁵⁹ of the author of the present response is no other than to make clear the falsity of the suppositions against the honor of the poor wife and against the Comparini, and to serve the cause of justice. And he leaves the judgment of it to those who have full knowledge of it. From the same consideration I pass over responding to the many other improprieties, which have been advanced uselessly and without any point by the said Writer.

And I close my response with the example of Samson, alleged by him. When he saw himself exposed to the public scoffs of the people, he gave a shove to the pillars of the palace, causing it to fall that he might die with the rest under its ruins, [ccxxv] and might cease to be longer the scorn of that people. So lest the said Franceschini may be ridiculed for his tricks, it is fitting that he and his companions pay the penalty merited by their crime. For these are pernicious to the State and to that peace and security which litigants in the Courts of Rome ought to enjoy, if we would maintain what the vigilance of the Supreme Pontiff Alexander VII, and his successors, has provided. For they have published a Constitution as to that, and with it Banns, successively promulgated. The sacred order of such laws should be observed all the more willingly, inasmuch as Guido had chosen the judicial way to vengeance, and the appeals made to the Supreme Pontiff,²⁸⁰ who is most eager to do what is just,⁶² were sent back to his judges.²⁸¹ Nor could Guido grieve for this without some pretended injury, as is evident; hence the Anonymous Writer wished to ascribe it to the aggravation by which the anger of Franceschini had been exasperated. This clearly shows with what intent he had broken into such detestable excesses.

[ccxxvi is blank in original.]

[ccxxvii] **Romana Homicidiorum.**

[Pamphlet 16.]

Most Illustrious and Most Reverend Lord:

I omit further discussion with my Lord Advocate of the Fisc about the communication of his allegations, because the time is brief, and I have professed great reverence for him since my youth. Let me also pass over the claim that when one is arguing about death inflicted by a husband upon his wife, not in the act of taking her in adultery, but after an interval, mere suspicion, however strong, is not sufficient to redeem him from the ordinary penalty of the Cornelian law, but that the clearest proof of the adultery is required, as is claimed by our opponents. Yet we have proved the contrary in our former argument § *quam-quam ad hoc.* [Cf. p. xxvi.] And Dondeus, Sanfelicius, and Muta, who were not cited there, hold that it is quite enough if the couple be found alone in some retreat; and No. 3 says especially if the wife be beautiful. [Citation.] See the word of Ovid: "Great is the strife of modesty with beauty, And man keeps eagerly craving it." [Heroides, Paris to Helen.] So in the present case, according to the same author: "By this young and passionate man is she supposed to have been returned still a virgin?" [Heroides, 5, 109.]

At present, we are dealing with a case not merely of clearest proof, but also of notorious fact; because we have a decree of this very Tribunal, by which such adultery was declared.²⁷¹ Although the words of this decree have been given in the present information, § *Absque eo quod* [cf. p. cxxvi], yet I wish to repeat them here, because they are so clear: "Giuseppe Maria Caponsacchi, of Arezzo, for complicity in the flight and running away of Francesca Comparini, and for criminal knowledge of the same, is banished for three years to Civita Vecchia."

But I can not pass over what is still claimed—that this decree was revoked—because, as I have said in my information, the truth is quite the contrary; for we have only the fact that, in the mandate for imprisoning the sinning Canon, the repetition of the whole decree, as given above, was omitted, and it was said: "For the cause, concerning which in the suit." These words are so far from showing a revocation that they rather offer confirmation of the said decree, as we have affirmed in our information, § *Nec verum est.* [Cf. p. cxxvi.] The same should be said of the like words furnished by the notary in the bond which Francesca Pompilia executed to keep the home of her father as a prison.²⁷⁴ This was when she was brought there from the nunnery, where she had been staying securely, on the grounds of her supposed

infirmity,²⁸⁵ but I may say more truly that it was because of her pregnancy, which she wished to hide by some evil deed.

[Our claim is all the more true] because this pretended revocation of the decree could not be made when the other side had not been heard, as I have said in my information § *Eoque magis*. [Cf. p. cxxvii.]

[ccxxviii] Likewise I can not pass over what is said as to the Canon having been condemned only to the penalty of banishment²⁷¹ because of defect of proof²⁷³ of adultery. For if such proof had not existed, how could my Lords Judges express in the decree that they condemned him for criminal knowledge of the same Francesca Pompilia? It is the truth that the judges held that the said adultery was most conclusively proved, and that the said Canon was convicted of the same, since in the prosecution nothing is wanting but the taking of them in the foul act; and this is not necessary to prove adultery. [Citations.]

The penalty to which the said Canon was condemned did not indeed correspond with the said crime.²⁷² As to this many replies may be made, but, because this has no connection with Count Guido let it also pass by. For however that may be, who can deny that Count Guido, on reading the said decree, which needed no comment, ought justly to be angered for the conjugal faith violated toward himself? And who can deny that he ought to be somewhat excused, if afterward he took vengeance for such a violation? [Citations.]

And this is true, although he took such vengeance after an interval, as was plainly demonstrated in my said past information, § *nec verum est*. [Cf. p. xxvi.] For there are few authorities who hold the contrary, and therefore it would be almost heretical to doubt the truth of such an opinion. [Citation.] Especially since this has been accepted in almost all the tribunals in the world, especially in that of the Sacred Council, which establishes the precedent for all the other tribunals of the City and of the entire Ecclesiastical State. Hence Concioli affirms that it is almost like sacrilege to depart from this opinion. [Citation.]

And is it not a fine pretense to wish to exclude the plainest proofs of adultery by the word of the very wife convicted of it, and then retained in the nunnery by reason of it, as my honorable Lord Procurator General of the Fisc has ingenuously acknowledged? For a person is not obliged to disclose his own baseness in the face of death, as we have proved in the said present information, § *Et quatenus* [cf. p. cxxx], and the § following. And since she had lived badly, not to say in utter baseness, to the injury of the honor and reputation of her husband, we inflict no injury on her by wishing to presume that even in death she did not come to her right mind, according to the saying: "He who lives badly dies badly." And no one, even in death, is presumed to be a Saint John the Baptist, as in my information § *Nec valet dici*. [Cf. p. cxxx.]

As therefore it remains firmly established that Count Guido had just cause for killing, or causing to be killed, Francesca Pompilia, [ccxxix] his wife, the same must be said as to the murder of Pietro and Vio-lante,⁴⁰¹ the father-in-law and mother-in-law. For in the prosecution of the said Francesca Pompilia for flight from her husband, proof also came to light that they had conspired in that same crime, and consequently were among the causes of the injured honor and reputation of Count Guido. And this injury to his honor had also resulted from what they had pretended and had exposed before everyone—that his wife was not their daughter, nor legitimately born, but was the daughter of a harlot.¹⁰⁵ And afterward they had received her into their home when she had been declared an adulteress. For either she was their daughter, and they ought not to deny it in Court, or else she was not their daughter, and they should not receive her into their home after she had been convicted of adultery. For in doing so they had, by that very act, declared that they had been and wished to be her panders. [Citations.]

The confession of Count Guido can not be divided from its qualification, that he had demanded the murders for honor's sake. But it ought to be accepted by the Fisc along with the said qualification, as we have proved in our information § *Huiusmodi enim confessio*. [Cf. p. cxxix.] The authorities alleged to the contrary by my Lord Advocate of the Fisc hold good in a qualification, extraneous to the confession itself and which is not therefore proved otherwise, and when there is argument for some extraordinary penalty, and we have admitted this in our information § *Præsertim*. [Cf. p. cxxx.]

But just as the plea of injured honor relieves Count Guido from the ordinary penalty for murder, so should he be excused from certain other ordinary penalties, laid in the Banns and Apostolic Constitutions against those bearing prohibited arms⁴¹³ or committing other crimes. For I have said, and I repeat, that the just anger which excuses him from the one crime should also excuse him from the others, since this reason is everywhere and always in his favor, that he was not of sound mind,⁴⁹⁴ according to what was affirmed in our information from § *Agnoscit Fiscus* [cf. p. cxxxiv], down to § *Quo vero ad item*. [Cf. p. cxxxvii.]

And just as this cause is enough to gain for Count Guido a diminution of the penalty, so should it be considered to be sufficient likewise to gain that favor for his fellows, who as auxiliaries can not be punished with a greater penalty than the principal himself, according to almost innumerable authorities, and they of great name, who were alleged in my past argument, § *Quæ dicta sunt* [cf. p. xxxvi], with the following, and in my present argument § *Verum et Sociis*. [Cf. p. cxxvi.] To this, no response has been given by the other side.

This is all the easier as regards Blasio Agostinelli,³¹⁵ who has not at all confessed that he killed or wounded any one, but only that he was present, as we have formerly considered the matter in our information § *Quoad Blasium*. [Cf. p. cxxxviii.]

And as to Domenico and Francesco, beside what has been deduced in favor of the others, they are foreigners,⁴²³ and are therefore not bound by the Bans of the Governor (for by these, men who live outside of the District are not bound) [ccxxx] nor by the Apostolic Constitutions prohibiting the bearing of arms,⁴¹³ as we have said in our past argument § *Quae eo facilius*. [Cf. p. xxxix.]

This is all the more so since Domenico still asserts that he is a minor,^{423 424} and for this purpose he was so described in the Prosecution, page 304. And as regards Francesco, beside the abovesaid description in the same prosecution, page 35, we have the baptismal register, which conclusively proves his age. [Citations.] For he was born the 14th day of February, 1674, from which it is evident that at the time of the commission of the crime, which is to be had in regard for punishment, [Citations] he had not completed the twenty-fourth year of his age.⁴²⁴ And to one less than twenty-five years old the penalty should be diminished, etc. [Citations.]

And this indeed is of necessity, and not at the discretion of the judge, because such diminution of penalty arises by advantage of law that has been passed and from intrinsic reason, diminishing the penalty. [Citations.]

Although there are not lacking some authorities who think the contrary, namely that it all depends upon the discretion of the judge, yet our opinion is the truer and the more generally accepted in criminal causes which are not very atrocious. [Citations.] And when the crime is merely savage, or more savage, the judge is obliged by the very necessity of his duty to diminish the penalty, according to those authorities recently alleged. [Citations.]

This opinion also has a place in the crime of murder, notwithstanding the order of the text. [Citation.] "If any one should make you a defendant under the Cornelian Law, it is suitable that your innocence shall defend and purge itself by your minority." For the order of this text should be interpreted thus, namely that a delinquent who is a minor is [ccxxxii] not to be excused entirely, but is only to be punished more mildly, according to the old authorities who are cited with abundant hand by Farinacci. [Citations.]

This is especially so when, as in the present case, the delinquent minor does not sin alone, but in company with others; for then he is presumed to be seduced by them, and therefore the ordinary penalty comes to be diminished the more readily for him. [Citations.]

We do not know whether the Fisc pretends to turn for the destruction of these foundations in law, because my Honorable Lords, the counselors of the Fisc, have claimed nothing as to this matter, either in their past argument or the present one. For when they claim to escape our exception by the Florentine Statute, [Citation] that a minor of sixteen years is punished criminally, other responses are at hand:

First, that the provision of this statute does not extend to crimes committed outside of the territory of the said State, but that the place of the crime and its statutes should be attended. Then these indeed cease, as they do in the present case, because the Banns of the Governor have no place when there is argument for the punishment of a foreigner. This fact arises from defect of power in the Prince or official establishing them, according to what was alleged in the past argument § *Quae eo facilius* [cf. p. xxxix], and the one following. For then the criminal should be punished according to common law. [Citations.]

The second response is that the statute says nothing else than that a minor of sixteen years can not be punished with the ordinary penalty of the crime. Consequently it ought to hold good in our case, since we are indeed arguing about a minor exceeding sixteen years, but of one less than twenty-five years old. Such a rule should be drawn from Common Law, in view of which the said statute in such a case receives a passive interpretation. [Citations.] Caballus testifies that he saw it so practiced in diminishing the penalty to one less than twenty-five years, that is to one who was eighteen years old. [Citations.]

Finally the third response, and the one that lays the ax to the root of the tree, is that the Accused is not of the city of Florence, nor of its territory, but of the territory of Arezzo. But the city of Arezzo [ccxxxii] and its dependencies are not bound by the statutes of Florence; first because they are not called subjects, but vassals, of the said city of Florence; and, second, because the city of Arezzo has its own statutes. [Citations.] For reference is had to the ruling state, when other subject states have not their own statutes; but it is otherwise if they have them. [Citations.]

And so they are contrary, or incompatible. [Citations.]

Soccinius [Citation] bears witness of what manner these statutes of Arezzo are, as compared with those of the city of Florence, etc., and this is plain from the Rubric, etc., where it is commanded that those under twenty-five years can not be rendered liable, without certain ceremonies, as Paolo di Castro counsels. [Citation.] For from this statute it is sufficiently evident that in the said city and its environs a less age is the rule according to common law.

So far as the Fisc may have foundations, which in our feeble judgment we have been unable to guess, I pray that these be kindly communicated to me, lest the poor accused minor may remain undefended.

Finally, as regards Count Guido, I pray that notice be taken of the unfortunate condition of himself and of his noble family. For all of his family and connection have had enough to lament even to the last breath of their lives, when they look upon the ignominy brought upon them by this woman and her parents. And because of this, there has been doubt up to the very present moment whether one nearly related would go mad. And the excellent piety of our most clement Prince and Most Illustrious Lord has declared this, to whom the Accused himself with his whole heart commands himself in the arguments made in his defense, not to speak of what they may learn about it from the Anonymous Author [Pamphlet 10]. [Citation.]

DESIDERIO SPRETI,
Advocate of the Poor.

[cxxxiii is blank in original.]

[cxxxiv] [File-title of Pamphlet 16.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City in
Criminal Cases:*

Roman Murder-case.

*For Count Guido Franceschini and his Associates,
Prisoners, against the Fisc.*

*Reply as to law, by the Honorable Advocate
of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[ccxxxv]

[Letter I.]⁴⁵⁰

To the illustrious Signor, my most worshipful Signor and Patron:

Too late have arrived those proofs, which were sent to me by your Honor, on behalf of Signor Guido Franceschini of blessed memory. For when the Congregation of Monsignor the Governor had determined, in spite of the reasons given in his favor, that Signor Guido was guilty under the death penalty, I obtained, with much trouble to myself, some delay for proving his clergyship⁴² alleged by me. To this end a messenger was dispatched to Arezzo. But since the Sanctity of Our Lord [the Pope] did not deem it wise to postpone the execution of the sentence already decreed, he has seen best by special writ⁴³⁰ to make denial of any clerical privilege, which might have been claimed [in Guido's favor], and also as regards the minority of Francesco di Pasquini, one of the accomplices. Hence sentence against all five has been executed to-day, with distinction only in the manner of their death, as Guido's life was ended by decapitation. This consolation survives for his relatives and friends, that he has been pitied by all men of honor and by all good men. Confessing my own shortcomings, I can not deny feeling infinite regret, as I attribute the whole outcome to my inability in offering the valid grounds. May God reward his house and all his friends with abundant blessedness for this tragic accident. Desiring your further commands I reaffirm myself as ever

Your Excellency's most obedient servant,

Rome, February 22, 1698.

GIACINTO ARCANGELI.³⁷⁵

To the illustrious Signor, my most worshipful Signor and Patron, Signor Advocate Francesco Cencini,⁴² Florence.

[ccxxxvi is blank in original.]

[ccxxxvii]

[Letter II.]⁵⁴⁰

Most Illustrious and most honorable Signor, my most Worshipful Patron:

The proofs you send did not arrive in time, because to-day finally, after so many disputes, the execution of poor Signor Guido has taken place, with the loss of his head, while the four cutthroats have been hanged. The case was decided Tuesday,⁴³² but because his clergyship was adduced, and on this ground it was claimed that the death-sentence had no place against him, a messenger was despatched to Arezzo later on to get proofs of it. But the Pope yesterday issued his warrant, and ordered that it be carried out completely to-day. Now that the will of God has been fulfilled that he should suffer such a punishment, it has at least been brought about, in view of the arguments made in his defense, that he died the death of a gallant man. For aside from the fact that he has died with exemplary courage,⁴³³ he has also been pitied by all gallant men,⁴⁴⁸ and his house has lost nothing in the matter of reputation.⁴⁴⁹ All Rome was there,⁴⁴⁷ as you may well believe. And

it has not been made good with all that has been written, and there have not been lacking admonitions of greatest consequence, since the Ambassador of the Emperor⁴²⁹ spoke of that point on Tuesday, as he himself told me day before yesterday. And then the matter [ccxxxviii] was settled precipitately.

I have finished the argument before the Congregation of the Council, and at any time that Monsignor Secretary wishes to take it, I think we shall be ready. I pray you favor me with those copies of the process as soon as possible. And if Canon Philippo does not give us the opportunity, he should be good enough to acknowledge it to me that I may think of other measures, wishing once for all to get out of this imbroglio if it shall be possible. And finally, I remain with all reverence,

My most illustrious and most excellent Signor,

Your devoted and obedient Servant,

Rome, February 22, 1698.

GASPERO DEL TORTO.

To the most illustrious and most honorable Signor,

My dear Signor, Signor Francesco Cencini,¹² Florence.

[ccxxxix]

[Letter III.]⁵⁴¹

My most illustrious and excellent Signor, my most worshipful Patron:

Tuesday⁴³² this most unfortunate case was brought up and the Congregation of the Governor decided—Delay and according to instructions. The instructions were that they would await the proofs of the well-known clericate.⁴³³ At this favorable decision the defense took heart and Guido's good friends began to breathe again.⁴³⁴ Then last evening at eight⁴³⁵ o'clock Monsignor signed of his own accord the warrant, in denial of the clergyship so far as it might be alleged and of the minority of one of the accomplices. No sooner had he signed the warrant than the news of it sped throughout the City, and with it the assurance of the sentence, which has been executed to-day since dinner against the five; that is, the loss of his head in the case of Signor Guido, and the gallows for the other four accomplices. I will not tell your Excellency my own grief, because you yourself will be able to be a true witness of it. These proofs would have been of the greatest relevancy, but not in the present case, because Monsignor wished it so.

I inclose the Fisc's argument,¹² except a single response, which I will send to you as soon as I can lay hands on it, that your Excellency may have the entire case.

Now that Signor Advocate del Corto has abandoned his present interests I may serve your Excellency in the matrimonial case [ccxl] and in the other of Gomez.⁴⁵¹ Therefore I set myself to all that your Excellency shall write, praying evermore your continual commands, that I may ever be your Excellency's

Obedient and humble servant,

Rome, February 22, 1698.

CARLO ANTONIO UGOLINUCCI.

Most Illustrious and most Reverend Lord:

In the contention most sharply and most learnedly carried on between the Defenders of the Poor and the Fisc in the case of the murders committed by persons led by Count Guido Franceschini against the person of Francesca Pompilia his wife, and Pietro and Violante Comparini, I refuse to descend into the arena, lest I may seem to fail in the office which I discharge in common with the said Defenders. My silent pity has delayed and let time slip by; because I believed it would be to the prejudice of Guido and his fellows imprisoned for that offense, (in whose excuse the plea of injured honor is especially strong) if I should wish to push the defense (which was committed to me long ago) of the shame and honor of the same Francesca Pompilia; for her tender mind has been stained by no infamy arising from impure lust, and against her the suspicious husband could have made no objection, unless wife-murder had followed, as if from this he wished to prove the adultery merely because he could then kill his wife, and he killed her that she might be believed to be an adulteress.

But now since the case has been most sadly terminated as regards all of those imprisoned (for thus these things terminated which should not have been begun) I begin anew the dispute over that most unfortunate question, and assert most safely (both for the reasons fully given in my argument for exclusion of the asserted rape, which is reassumed gratuitously, and for those more fully gathered by his Honor, My Lord Advocate of the Fisc, in his very learned allegations distributed in both ⁵²⁴ presentations of the case), first that the memory of the aforesaid Francesca Pompilia should be utterly absolved from the crime of adultery, which was unjustly and all too bitterly charged upon her by her husband, and second that declaration should be made by a definitive sentence that she has never violated her marriage vow. And this is in spite of the fact that such insistence may seem incongruous. For although all crimes cease with the death of the criminal [Citations] [cclxiv] nevertheless when a crime is atrocious, and of such a nature that it involves in itself a brand of infamy, its memory ever endures. Therefore it is worth while for the principal to vindicate the fame of the authoress from the asserted crime of adultery [Citation]. Peregrini speaks as follows: "The thirteenth case is when the heirs of one dead, for the purpose of purging him from the infamy which works against him publicly on account of crime, wish that [the court] take knowledge of the crime itself, for the purpose of establishing his innocence, for this

is conceded by law." And Boss asserts: " Note that even if death does utterly remove any further penalty, yet the heirs of one who is dead may make a stand for his fame and honor, in order that a declaration may be made about that crime." And Caballus: " For although with the death of the delinquent, a crime may be said to be extinct so far as his own person is concerned, yet the heirs of the accused, in their own interest and to wipe out the infamy of the one who is dead, may petition that the court go on to give an opinion, and that it be declared that the dead one had not committed crime." And he affirms the same under the following number.

And indeed this is not without manifest reason. For just as the Fisc may go further in the investigation of a crime that had been perpetrated during the lifetime of the one now dead, even for the purpose of damning his memory, [Citations] likewise it can not be denied by the principal himself, as the beneficiary heir and successor of the same Pompilia and Pietro Comparini, that inasmuch as her innocence is evident he may insist upon carrying away a sentence of absolution; for in other cases any one at all may have a chance to defend one who is dead. [Citations.]

[ccxlv] And to delay such a judgment it is not right that the flight again be alleged, which the said Pompilia made in the company of Canon Caponsacchi, with whom she was arrested at the inn of Castelnuovo. For to remove that charge it is quite enough for one to allege the judgment of this Most Illustrious Congregation, given under the date of February 18, last past, against Guido Franceschini, because of which he was publicly put to death on the twenty-second day following, notwithstanding the fact that, to avoid the penalty of wife-murder, he insisted solely upon the asserted adultery, which he claimed had resulted from the aforesaid flight from home. All suspicion whatsoever of her dishonesty ceases because of the defenses then made and because, in the very prosecution, there was apparent a very just reason, on account of which the wretched wife attempted to flee thus from the home of her husband. Nor was it for the purpose of satisfying lust with the asserted lover, but that she might go back to her own hearth and there, with her parents, might live a safe and honest life. This cause is very plainly proved by the notorious quarrels⁹⁵ which arose on account of the poverty of the domestic establishment immediately after her arrival at the City of Arezzo along with Pietro and Violante Comparini in execution of the agreement included in the marriage-contract.⁹⁶ And on account of this poverty the Comparini were obliged, after a few months,⁹⁸ to go back to the City,¹⁰⁰ with no small bitterness on account of the deception which they had detected. This is evident from the letters of Abate Paolo Franceschini, which presuppose these complaints that resulted from the said deception, and especially from the letter

written March 6, 1694: "I write again to you that I do not wish to imitate him in his manner of writing, not being of his mind to sow broadcast in my letters such words as would well merit response by deeds, and not by words. And these are so offensive that I have kept them for his reproof and mortification." And further on: "So that if you give trouble, which I will never believe, you yourself will not be exempt therefrom." It is also evident from the letters given in my past information, and especially in § *Videns igitur*, with the one following. And although this does not show the nature of the altercation, yet, since Abate Paolo has not shown the letters written to himself, the presumption presses upon him very strongly that the complaints were just and that the cause of their quarrels and altercations was well founded. [Citations.] [ccxlvii]

It is also true that a very bitter lawsuit²⁰⁰ was brought by Pietro Comparini for the nullification of the dowry contract and for the proof of the pretense of birth, which had been made by Violante, the mother,¹⁰⁸ both to deceive her husband and to bar his creditors,¹⁰⁷ who were pressing him hard at the time.⁷² And since the dowry included all the property⁹¹ and the entire patrimony of Comparini,⁹² which was of no small value when we consider the rank of the persons concerned, controversy had indeed been raised for a considerable amount by the father-in-law. And this, as experience teaches from time to time, is accustomed to bring forth implacable hatred and deadly enmity. [Citations.] It produced indeed such an effect for this unfortunate wife, so that the love of her husband, which had long been disturbed by the preceding altercations, was finally quite extinct. And this was so to such an extent that she often found herself exposed to deadly peril because of the severity of her husband, who at times pursued her with abuse, and again even with a pistol.⁴⁷¹ And it can not be questioned that such perils are quite suited to strike fear even into any hardy man. [Citations.] Hence it can be much more affirmed of Francesca Pompilia, a girl of tender age, who was destitute of all aid, and away from her own home and her parents. [Citations.] And Mogolon [Citation] declares that the mere sight of arms, even if the one who has them does not use them nor unsheathe them, is just cause for fear; and in § 7, No. 15, he considers the absence of relatives as a ground for fear. And D. Raynaldus [Citation], [ccxlvii] says that it is enough if one sees signs or acts of manifest desire, or such as are preparatory.

Therefore, since so many very relevant circumstances concur, on account of which Pompilia was moved to desert her husband's bed by flight, all suspicion whatsoever of dishonesty and of violated conjugal faith is utterly removed. For whenever we have two causes, one of which is lawful and permissible, while the other is iniquitous and abominable, the former is to be fully received, and thereby the charge of crime

is quite excluded. [Citations.] [And this is true] in spite of the fact that this lawful cause may seem to be excluded [first] by the letter written by Francesca Pompilia to Abate Paolo. For in the letter,¹¹² after she had thanked Abate Paolo because he had joined her in marriage with his brother, pretense is made that her parents gave her the depraved counsel to destroy the entire home and to go back to the City with her lover; [it also makes pretense] that since their departure she was enjoying a quiet and tranquil life. [Second] from the company of the Canon Giuseppe Caponsacchi, with whom she had fled; because of which he was banished to Civita Vecchia for three years.²⁷¹

For however it may be with the asserted letter, whether it is substantiated or not, and whether or not the qualification should be considered probable, which is added in her sworn testimony by the same Pompilia, namely that her husband had marked the characters¹¹⁴ and she had blackened them with ink by tracing them with a pen, because she herself did not know how to write; yet it is certain that if the letter be read attentively it will be absolutely impossible to assert that she had written it with a calm mind. For who can be found, so unmindful of filial love and duty toward parents as to persuade himself that this tender girl could have laid upon her parents such detestable crimes? Because at the time she was not more than fourteen years old, according to the certificate of baptism given in the Summary of the Fisc [cf. p. clv], in the second setting forth¹¹⁴ [ccxlviii] of the cause, No. 2. And she was away from her own home and still grieving for the very recent departure of her parents, and was badly treated in the home of her husband, as is clearly shown by the continual complaints and recourse made not merely to the most reverend Bishop,¹³⁹ but also to the Lord-Commissioner of the city.¹³⁸ Nor is it probable that she would have informed her brother-in-law, who was so very unsympathetic toward her, of these matters unless, as she has frankly confessed in her sworn examination, she was compelled thereto by her husband. Nor without very evident peril of death could she show any reluctance to him because of his excessive severity, which she had very often felt before. And as this improbability is well suited to strike horror into those who read it, so likewise it very well shows that the letter was not written voluntarily,¹⁴⁸ but under compulsion. [Citations.] Caballus asserts that what no sane mind would approve is inadmissible. [Citation.] And indeed such excessive cunning in extorting the said letter from the wife plainly proves Guido's craft, and the fact that the letter was obtained by false pretense, in order that he might quiet the mind of the same Abate, his brother. For the latter had been harassed by continual complaints on account of ill treatment of the wife, and had not ceased to criticize Guido daily for them. [Citation.]

As to her association with Canon Caponsacchi, this likewise does not seem enough to establish the blot of dishonor. For the most wretched wife was utterly destitute of all earthly aid and had vainly entreated the authority of the most reverend Bishop,¹³⁹ and of the Lord-Commissioner,¹⁴⁰ to free her from deadly peril; and on account of her age and sex it was not suitable that she should flee alone or in the company of some lowborn serving woman,¹⁴¹ for in that way she would carelessly expose herself to graver peril, as might have happened to her if she had been overtaken while alone on the journey. For then it could be said of her: "She fell upon Scylla while trying to avoid Charybdis."¹⁴² Therefore we should not be surprised if she took the aforesaid Canon as a companion. For he had been proposed to her by both Canon Conti¹⁴³ and Gregorio Guillichini,¹⁴⁴ who were related to Pompilia's husband. [ccclix] And it is utterly incredible that they would have consented to such a flight if they had not known it was quite necessary to evade the peril of death, which they very well knew was threatening the luckless wife, and if they had not had strong faith in the honesty and integrity of her companion. Therefore, as such a necessity was pressing so hard upon her, her prudent choice of the lesser evil eliminates any shadow whatsoever of her pretended dishonesty. [Citations.]

[This is especially true when we] consider the manner in which the flight was executed, by taking the most direct road to the City with the utmost possible speed. And it very well shows that the sole motive was to save her life, and not to debase herself by licentious delights. For if this latter had indeed been the principal cause, she would not have gone to Rome by the shortest road,¹⁴⁵ where she might immediately be taken by her brother-in-law and her parents, but would have gone to some more distant regions, or else she would not have gone with such swiftness, but would have delayed out of the public highway, and in a place where her husband could not find her, and where she could fulfill to satiety her lust.

This utter improbability therefore very well shows the truth of the cause for flight adduced by the wife in her sworn testimony—namely that she had gone swiftly to the City in order that she might there place her life and honor in safety in the home of her parents. For just as the strongest sentence of blame may arise from mere probability, so likewise no less presumption of innocence should arise from this improbability. [Citations.]

And this is strongly urged by the frank protestation made in the very act of arrest at the inn of Castelnuovo to the husband himself by the Canon, who rebuked him concerning this flight: "I am a gallant man, and what I have done, I have done to free your wife from the peril of death."¹⁴⁶ So testifies Jacopo, son of the former Simon, a witness for the Fisc, in the prosecution for flight, page 50. And an example

was offered by me in my allegation as regards that flight, namely that of Scipio Africanus. [ccl] For when the beautiful young wife of Alecius, the chief of the Celtiberi, had been captured by Scipio's soldiers, he said in restoring her to her husband: "Your wife has been with me as she would be with her own parents. Her virtue has been preserved for you so that she can be given back to you again, a gift unviolated and worthy of me and you." Titus Livius bears witness to this in his Histories, book 26, and page 493 in my volume.

And although it may be very difficult for a beautiful woman¹⁶ to preserve the decorum of her honor while journeying in the company of a young lover, yet it is not utterly impossible, as the examples seem to show, which were related in my allegation § *Quidquid dicat*. And to these I add that of Penelope, of whom Ovid sings in book 3 of his elegies: [Amores III, 4, 23.] "Although she lacked a guard, Penelope continued chaste among so many suitors."

And this is especially true since neither the journey nor the company of the Canon were voluntary, but were merely for the purpose of avoiding the peril of death. And since such necessity was present, the presumption drawn from Ovid's *Ars Amandi* is rendered still further inapplicable, namely that "From a passionate young man, can she be believed to have returned a virgin?" [Heroides, 5, 129.]

Nor do the letters²²² which were found in the closet²²¹ of the inn at Castelnuovo seem to stand in the way and hinder the sentence petitioned, and impose a blot of infamy upon Francesca Pompilia. It is claimed that these were written by her to the Canon on account of the very devoted love with which she was pursuing him. But the exceptions and responses made in the past informations hold good. The first is that they were not acknowledged by her, nor was the identity of the handwriting proved; and some uncertainty is still present, since it is not evident to whom they were directed; nor would it be improbable that they might have been framed by the husband.²²³ For he was present at the capture and search²²¹ and hoped, indeed, that therefrom might result more readily the fixing of the crime of adultery. And he insisted very strongly upon this, in order that he might gain the desired dowry and lucre.⁴⁶ This mere possibility to the contrary is enough to avoid the proof, which it is claimed may be drawn from them. [Citations.]

[ccli] The second response is that, even though such exceptions as the above might not hold good, yet no proof of violated conjugal faith and of dishonor can be drawn from these letters. For even though proof of adultery may result from love letters, it is utterly excluded in our case when we see that they were directed to a licit end,²²⁴ namely toward soliciting the Canon that he might afford her aid in her flight and that she might avoid deadly peril. For then, just as the end is permissible, so should the means also be considered lawful and per-

missible, even though suspicion is not lacking; for these should be considered, not in themselves, but on account of their end. [Citations.] But indeed, unless from the love letters themselves there result an implicit confession of fornication, proof of adultery can not be drawn from them. [Citations.]

It should be specially noted that she had very strong confidence in her own continence and in the integrity of the Canon. And she trusted him much, and hoped that he would conduct himself modestly during the journey, since it is evident from these same letters that she had found fault with him for his freedom once: "And I marvel that you, who have been so chaste, have composed and copied matters that are so dishonorable." And further on: "But I would not have you do in any case as you have done in these books. The first of them is honorable, but the other octaves are quite the contrary. I can not believe that you, who have been of such honor, have become so bold." For such sincere objurgation and the very tenor of the letters, in which no dishonesty is read, clearly show and declare the spirit of Pompilia, who wrote them. For just as words are to be understood according to the thought of the one proffering them, so likewise should letters be interpreted according to the intention of the one writing them. [Citations.]

[ccclii] Since therefore the honor and modesty of Pompilia is vindicated from the flight and the letters, of still lighter weight are the other proofs of pretended dishonor. These are deduced from the approach of the Canon to her home¹⁷⁰ for the purpose of speaking to her; from the insidious manner in which the flight was prepared and put into execution, by means of an opiate¹⁷¹ administered to her husband and the servants; from their mutual kisses on the journey,¹⁷² and from their sleeping together at the inn of Castelnuovo.¹⁷³ For beside the general response that no conclusive proof is offered for all these, such as would be necessary to establish Pompilia as guilty of adultery, there is a separate response for each of them.

The entry and egress at night time¹⁷⁰ into the home of Francesca rests merely upon the deposition of a single witness, Maria Margherita Contenti,¹⁷¹ who is under two very relevant exceptions: namely those of singleness and of harlotry.¹⁷² Her word therefore can impose no blot of infamy. [Citations.] And since such approach would tend toward the single end of arranging for the flight and rescue of the unfortunate wife from the very imminent peril of death, it should not be presumed to be for an evil end. For when an express cause is plainly present, to which a matter may be referred, and this cause is entirely lawful, the matter should not be attributed to a cause that is illicit and criminal. [Citation.]

The insidious manner, also, whereby Francesca Pompilia put into execution the flight, by preparing an opiate¹⁷³ for her husband and all

the household (aside from the fact that it is not proved), would afford proof of sagacity rather than of dishonor, even if it were proved. For the wife would have been very foolish if she had attempted flight without such a precaution.²⁰⁷

Under the same lack of proof labors the asserted mutual kissing during the journey;²⁰⁸ for that proof is entirely too slight, which is pretended to result from the deposition of a single witness of the lowest class. [ccliii] Especially since his word is shown to be too much prejudiced; for he swears that, while he was driving the carriage swiftly at night time, he saw Francesca Pompilia and the Canon kissing each other. Nor does he give any reason, as that the moon was shining, or that some artificial light was present to dispel the darkness. Inasmuch as such a detail is necessary in a witness who is testifying about a deed at night time, its omission takes away all confidence in him. [Citations.] For there is to be added another very strong improbability, namely that, while he was driving the carriage with such velocity that it seemed to fly rather than to run, he could see their mutual kissing by looking backward. Still more is this improbability increased by the very word of this same witness, since he swears that he had driven Pompilia without knowing that it was she, until afterward, while returning to Arezzo, he had met Guido Franceschini, her husband, following her. Because if he had seen her kiss, he would have recognized her straightway, since he had often seen her before and she was well known to him. And therefore it should be absolutely declared that, either influenced by the tedium of his secret prison,²⁰⁷ he had been compelled to swear so, or, as is more probable, since on account of the very great speed of the carriage the bumping together of those seated therein might chance,²⁰⁹ he had believed that this chance jostling of their heads and faces was for the base purpose of kissing. Hence the proof arising from his deposition was justly held in contempt in the prosecution for flight. And it would have been considered if it had had any probability.

Finally the proof of dishonor drawn from the asserted sleeping together in the same tavern at Castelnuovo, is far weaker, since it was constantly denied by both Pompilia and Caponsacchi in their testimony. And only a single witness, the house-man of the same tavern, swears to it; and this also not from certain knowledge, but presumptively, [ccliv] because they had asked him for a room with a single bed. Canon Caponsacchi frankly confesses why he had ordered that only a single bed should be prepared—namely that Francesca Pompilia, who was worn out because of ill-health²¹³ ²¹⁸ and the discomfort of their precipitate journey, might rest a little, while he himself kept guard.²¹⁴ Such an act should not be assigned to an illicit cause, as Cravetta [Citation] advises in such circumstances. And, in No. 15, he says that interpretation should always incline to the humarer side, even when the rigorous

side may seem the more likely. And the same author continues thus in *Nos. 20 and 21.* For it would not suffice as a full proof of adultery that any one be found alone and naked with her alone and naked, and that a young man be found unclothed and with shoes off in a closed chamber with a woman. Much less can such proof arise from a very brief delay in the same chamber for the purpose of keeping watch.²¹⁴

Very slightly does it stand in the way that Francesca Pompilia, in her cross-examination, concealed this delay by asserting that she had arrived at the tavern at dawn.²¹² For she was very well aware of the credulosity of her husband, and possibly asserted this to avert further suspicion of violated honor, which certainly might have arisen if she had confessed that she had spent a longer time in the tavern. As even if she had not denied such a stay, the confession under circumstances that still argue for the preservation of her modesty would not have been to her prejudice, so likewise the lie can do no injury. [Citations.]

But all suspicion of pretended dishonor is quite eliminated by the assertion of the most unfortunate woman, which was made in the very face of death, after many severe wounds had been inflicted upon her by her husband. [For she declared that] she had never sinned against her marriage vow,²¹⁵ as is very evident from the numerous depositions of religious men,²¹⁶ who ministered to her in death. They assert that they heard her continually praying that she might be given no forgiveness by the Divine Clemency for such a sin.²¹⁶ This assertion made in the very face of death, [cclv] deserves all faith,²¹⁷ since no one placed in that condition is presumed to be so unmindful of eternal safety as to be willing to lie. [Citations.]

Finally, no foundation for accusing the memory of Francesca Pompilia of dishonesty can be established upon the asserted decree of this most Illustrious Congregation, by whom Canon Caponsacchi was condemned to three years' banishment in Civita Vecchia,²¹¹ with a statement made of his running away and criminal knowledge of Francesca Pompilia. For, as the Fisc himself admits, there was demanded by me, though not *in extenso*, the modification of that title by the honorable Judges, with the approval of his Excellence the Governor. And therefore, in the order for imprisonment, these words were suppressed and others were put in their place: *Pro causa de qua in actis.*

All further difficulty is removed from the mere consideration that such a decree had been issued, while no defenses had been made for Francesca Pompilia, and while she was still utterly without a hearing. For she had not the slightest knowledge of it, since she had not been notified. But in the decree for the assignment of the home as a prison, only a cause relative to the trial was expressed. Hence it could not injure her, since it was issued against a third party²¹⁴ while she herself had not been cited. [Citations.] And in the circumstances that a

sentence given against an adulterer can do no injury to the adulteress when she has not been cited, is the text [Citations]: "If he is condemned, the wife is not condemned thereby, but shall carry on her own case." [Citation.]

This is especially true since we are not now contending to free the husband from wife-murder, and to infer a just cause apart from belief [cclvii] in the dishonor of the wife resulting from the said decree, and which would excuse him from the penalty of the Cornelian law. In this case, the changing of the said decree might possibly serve for an escape. But we are contending about the damning of the memory of a woman now dead, and about rescuing her and her family from infamy. And in the latter case just as such a harsh decree could not injure her during her lifetime, so likewise it can not do her injury after her death.

ANTONIO LAMPARELLI, *Procurator of Charity.*

[in old writing]

And according to the letter of Carolo Antonio Ugolinucci, May 17, 1698, I understand that the criminal court after two votes, decided on absolution.

[cclvii is blank in original.]

[cclviii] [File-title of Pamphlet 17.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases, or by
the Most Excellent Lord Venturini.*

Roman Lawsuit.

*For the Heir-beneficiary of the former Francesca
Pompilia, formerly wife of the former Guido
Franceschini, against the Fisc and
Associates in the Lawsuit.*

*Memorial of Fact by the Honorable Procurator
of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cclix] INSTRUMENT⁴⁵⁶ OF FINAL JUDGMENT.

[Pamphlet 18.]

Given for the restoration⁴⁵⁷ of the good name and reputation of Francesca Pompilia, now dead, formerly the wife of Guido Franceschini of Arezzo, now dead; for acquittal in favor of Domenico Tighetti, as an heir beneficiary of the same Francesca Pompilia, from all disquietude,⁴⁵⁸ all molestations, vexations, and perturbations, brought or threatened to be brought by the Venerable Monastery of Saint Mary Magdalene of the Convertites²⁷⁷ in the Corso; together with the citations lawfully executed in observation of the four terms to instruct themselves as to the appeal and its legal prosecution, in order that the same sentence might pass on, as it has passed on, to judgment, because no appeal has been interposed.

In the name of God, Amen.

September 9, 1698, under the sixth declaration in the eighth year of the Pontificate of the Most Sacred Father in Christ, etc., Innocent XII, Pope by Divine Providence. This is a copy or transcript of the citations made by my own act, and written below, and of the sentence rendered respectively of the following tenor, namely:

The Most Reverend and Most Illustrious Governor in Criminal Matters:⁴⁵⁴

Let the undernamed principals on the other side be cited, etc., to appear in the Criminal Court to-morrow, which will be the nineteenth day of the current month, at the accustomed hour of convening court, lest it seem good that each and all the terms be repeated as ill founded, and that they therefore are to be held and observed as null and void in their force for any powers whatsoever, and lest the one so insisting be freed from censures, so far as, etc., it be concluded, or seem best to be concluded in the case, [cclx] and that the final sentence be heard in due form according to the aforesaid insistence by Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, the wife of the former Guido Franceschini, as Principal, or, etc.

NOTARY FOR THE POOR.

The Most Illustrious Francesco Gambi,⁴⁵⁵ Procurator General of the Fisc, and of the Reverend Apostolic Chamber.

The Honorable Giovanni Maria Serbucci, Procurator and Manager of the lawsuit brought by the former Guido Franceschini.

The Honorable Francesco Paracciani, Procurator of the Venerable Monastery of St. Mary Magdalene of the Convertites in the Corso.

Against the Procurator General of the Fisc, etc. He says that no sentence can be given, unless in favor of the Fisc, and so far as, etc., insists that he be granted delay for the purpose, and in the meantime they can not go on to any expediting of the cause, except for reason given in full court, and by the vote of the Lords thereof, and by testimony of the opposition in prison, and without citing all who have interest, etc., this 18th day of August, 1698.

FRANCESCO GAMBI,
Procurator General of the Fisc.

I have made the above citation against the Fisc personally this day, and against the others by copy, which was sent to their homes, this August 18, 1698.

BALATRESIUS.

Aloysius Pichius, Substitute for the Fiscal General.

AUGUST 19, 1698.

When he had made statement of fact, Antonio Lamparelli, Procurator, presented his case and petitioned as above. Thereupon the Most Illustrious and Most Excellent Lord, Marcus Antonius Venturinus, J. V. D.,^{456 270} who holds the judicial bench, for the Most Illustrious and Most Reverend Governor of our dear City in criminal cases, gave sentence, as in this schedule, which he has taken in his own hands, has seen, read, and subscribed, and given and consigned to me as a notary for publication of the following tenor, etc., in the presence of Antonio Bernardino Piceno and Antonio Toparino of Caprarola, witnesses, etc.

In favor of Domenico Tighetti, in the name, etc., against the Fisc and those consorting with him in the suit.

In the name of Christ, whom we have invoked, we who sit for this Tribunal, and who have only God before our eyes, give this as our definitive sentence, which we offer in these writings by the advice of those skilled in law, in the cause or causes which have been tried before ourselves in the first place, or in the second, and which are now being considered, between Domenico Tighetti, as the heir-beneficiary of the former Francesca Pompilia, the wife of the former Guido Franceschini of Arezzo, on the one part; and the Fisc and Giovanni Maria Serbucci as Procurator and Manager of the lawsuit of the former Guido Franceschini, and Francesco Paracciani, Procurator of the Monastery of Santa Maria Magdalena of the Convertites in the Corso for all their rights and parts in that interest, on the other part; concerning and upon the pretended adultery committed by the said former Francesca Pompilia with Canon Giuseppe Maria Caponsacchi,

and as regards other matters in the conduct of the cause or causes of this kind, [ecclxi] more fully deduced, etc. By authority of the decree for the remission of the case, which was made by the Most Illustrious and Most Reverend Auditor S. S., by the acts of Pascasius, concerning which in the conduct, etc., and for cause given in the Court, and by vote of the same, we say, pronounce, declare, and finally adjudge from what has been newly deduced, that *proof is not established as regards the pretended adultery*, and therefore the memory of the same Francesca Pomilia should be and is *entirely restored* to her pristine good name and reputation; and that the same Domenico Tighetti, in whose name the above was deduced, should be and is absolved and liberated from each and all disquietudes, molestations, vexations, and perturbations brought, or threatened to be brought, by occasion of these, as on account of the statement of these we have restored, absolved and freed him, as above. And for this restitution and absolution and freedom, we wish and command that it be held as law that the suit or suits, of whatever nature, which have been brought thereupon be abolished, as we abolish them. And we charge that perpetual silence be imposed upon the Fisc and his consorts in the suit. And we have thus spoken, pronounced, declared, and finally given sentence, not only, etc.

I, Marcus Antonius Venturinus, who hold the judicial bench have so pronounced.

Given on this 19th day of August, in the presence of Antonio Bernardino Piceno, and Antonio Toparino of Caprarola, Witnesses, etc.

By the Most Illustrious Governor of the City in criminal cases, or the Most Excellent Lord Venturini.

Let the undernamed be cited for learning the appeal, and its lawful prosecution for the first time, at the aforesaid instance of Domenico Tighetti, as Principal Heir-Beneficiary of the aforesaid Francesca Pomilia, formerly wife of Guido Franceschini:

CHARITAS.

The Honorable Giovanni Maria Serbucci, as Procurator and Manager of the legal proceedings of the said former Guido Franceschini, as principal on the other side.

The Honorable Francesco Paracciani, the Procurator of the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso for all, etc.

I have made the said citation at his home, August 31, 1698.

MOLINELLUS.

September 1, 1698.

When we had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of Charity, appeared, petitioned, and was granted, as above.

By the Most Illustrious Governor of the City in criminal causes, or by
the Most Excellent Lord Venturini.

Let those named below be cited for learning of the appeal and its
legitimate prosecution this second time, at the aforesaid instance of
Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia,
formerly wife of the former Guido Franceschini, Principal, or, etc.

CHARITAS.

[cclxii] D. Giovanni Maria Serbucci, as Procurator and Manager
of the lawsuit brought by the former Guido Franceschini, as
the Principal on the other side.

D. Francesco Paracciani, Procurator on the other side for the
Venerable Monastery and Convent of St. Mary Magdalene
of the Convertites in the Corso, for all, etc.

September 1, 1698, I have made this.

MOLINELLUS.

By the Most Illustrious Governor in criminal causes, or by the Most
Excellent Lord Venturini.

September 3. When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted, as above.

Let those named below be cited for learning of the appeal and its
lawful prosecution, this third time, at the aforesaid instance of Dom-
enico Tighetti, heir-beneficiary of the former Francesca Pompilia, wife
of the former Guido Franceschini, as Principal, or, etc.

CHARITAS.

D. Giovanni Maria Serbucci, as Procurator and Manager of the
lawsuit brought by the former Guido Franceschini, as prin-
cipal on the other side.

D. Francesco Paracciani, Procurator of the other side for the
Venerable Monastery and Convent of Santa Maria Mag-
dalena of the Convertites in the Corso, for all, etc.

I made this September 3, 1698.

MOLINELLUS.

September 4, 1698.

When he had made statement of fact, R. D. Alexander Cassar, sub-
stitute Procurator of the Poor, appeared, petitioned, and was granted
as above.

By the Governor in criminal causes, or the Most Excellent Lord Venturini.

Let those named below be cited for learning of the appeal and its lawful prosecution, this fourth time, and of the final presentation, and the decree, etc., at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, as Principal, or, etc.

CHARITAS.

- D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini as Principal on the other side.
- D. Francesco Paracciani, as Procurator of the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso, for all, etc.

I have done this, September 4, 1698.

BALATRESIUS.

September 5, 1698.

When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted, as above.

I, Domenico Barlocci, Notary of the Court of Criminal Causes of the Most Illustrious and Most Reverend Governor of the City, as Notary for the Poor, have found this copy correct by collating it, although it was extracted from the original documents by one who is trustworthy in my eyes, etc. In pledge of the above, I have subscribed and have published it, as I am required to do.

[The seal of the said Notary.]

The Secondary Source
of
The Ring and the Book

A Contemporary Manuscript Pamphlet.

NOTE.

"The following pages contain a MS. contemporaneous account of the execution of the principal actors in the tragedy which has been immortalized in the poem of *The Ring and the Book*.

"I am enabled by the kindness of my friend, Mr. Browning, to give it a place in these *Miscellanies of the Philobiblion Society*."

JOHN SIMEON.

(I shall not attempt to say with what a feeling I correct proof-sheets received on the day subsequent to that which brought the intelligence of the death of this great-hearted and noble-minded man, characteristically good and gracious to the very last.)

R. B., May 24, 1870.

The above words are the introduction by Sir John Simeon and the comment by the poet (*Philobiblion Society Miscellanies*, XII, 1868-9), on the reprint of the subsequent pamphlet in the original Italian.

It was found in London by one of Browning's acquaintances, who, knowing the poet's interest in the subject, sent it to him. Internal evidence indicates that it was probably written (but not published) some few years after the crime, and it is more popular in style than any part of the *Book*. The writer during the first half of his pamphlet follows closely the affidavit of Pompilia and the second anonymous pamphlet [No. 15] of the *Book*. He then adds much interesting information as to the murder and the pursuit, arrest, trial and execution of the criminals. Browning uses almost every scrap of additional information it affords. He accepts its fact with the same fidelity he shows in using the *Book*, and uses it extensively and without discounting its value as compared with the official record. It is therefore treated as an essential portion of the present source-study. Its new matter will be indicated by *italics* in the following translation.

Mrs. Orr has published somewhat less than half of the pamphlet in her *Hand-book in translation*, which has been reprinted in the *Camberwell Browning*, and in the *Browning Guide Book* by G. W. Cook. The present version is made directly from the Italian text of the *Philobiblion Society* reprint.

THE DEATH OF THE WIFE-MURDERER GUIDO FRANCESCHINI, BY BEHEADING.

Guido Franceschini, a nobleman of Arezzo³⁷ in Tuscany, had stayed for some time here in Rome in the service of a person of some eminence.³⁸ He decided to take a wife with dowry enough to be of advantage to his own house. When he had revealed this desire to a certain hairdresser³⁹ near the Piazza Colonna, she proposed to him the Signora Francesca Pompilia, thirteen years of age, the daughter of a certain Pietro Comparini and Violante Peruzzi. For beside the promised dowry she was heir to the reversionary interest in bonds and other properties worth about 12,000 scudi. When he had heard of this advantageous dowry, which seemed to him to be quite to his point, he lost no time in revealing it to his brother Abate Paolo, who had dwelt here in Rome for many years in the service of a Cardinal. He went along with Guido to the mother⁴⁰ of the young woman, as they flattered themselves that they would succeed better in this way than by demanding her of the father, who was somewhat hard to approach. When they had made it appear that their income was of considerable amount, they succeeded in their intent; although it was then found out that their entire capital did not amount to the total of their income, as given in that note.⁴¹

It was easy for Franceschini to win over this woman,⁴² as she was driven by the ambition of establishing her daughter in the home of persons of good birth. She gave her own consent, and so worked upon her husband⁴³ as to induce him to sign the marriage bond. Then when Comparini had been informed by a person who knew the resources of Franceschini, that they were quite different from what they had been represented to him,⁴⁴ he changed his mind, nor did he wish under any consideration to carry out the marriage.⁴⁵ He gave as a pretext the very tender age of his daughter, along with other reasons. The mother of Francesca, however, not seeing any chance to give her daughter to Franceschini, had her secretly married during December, 1693, in San Lorenzo in Lucina.⁴⁶

When this marriage reached the ears of Comparini, he was much angered at Violante.⁴⁷ But she had such a gift of gab that Comparini not only agreed to it,⁴⁸ but beside the dowry of 2,600 scudi,⁴⁹ on which he had already paid 700 scudi, he also made gift of his entire possessions to the couple.⁵⁰

After several days, Franceschini decided to conduct his wife and her parents back to Arezzo, and this took place in the same December.⁵¹ When they had arrived there, the parents of the wife could see that the state of their son-in-law was much worse than they had imagined it.⁵² Therefore they were all the more embittered by the penuriousness they showed in the food, and in many other matters. One morning while they were at the table they heard their daughter denied fire for warming her bed, and saw the Franceschini practice many other cruelties toward her. They were much troubled at it, and all the more so when they saw a Canon of the Franceschini household,⁵³ a brother of the husband, rush upon their daughter. He struck Francesca with a dagger in his hand, who had to make her escape by running into a room and shutting the door. Then one evening her father went to visit a friend, and when he had come back home he

found the door shut. Therefore his daughter, who was still awake, was obliged to go downstairs to open it for him, but not without first having called her husband, who never even opened an eye. Then when she had gone down to open the door and had gone outside a few steps to meet her father, all of a sudden she found herself shut outside the house along with her father. For that reason they were both of them obliged to sleep outside of the house that night, her father at the inn and the daughter at one of the neighbors. Therefore, more and more, as the days passed, the Comparini decided to return to Rome.¹⁰⁰ But as they were without money they were obliged to beg it of Franceschini, who scarcely gave them the necessary expenses of the journey.⁹⁹

When the old Comparini had departed, Franceschini thought to hide what had happened. He constrained his wife to write¹⁰¹ to Rome to the Abate, his brother, to tell him that she cherished in her heart his memory. This letter was dictated by the husband himself. The ignorant girl did as Guido wished, whose purpose was to have it believed that his parents-in-law were the fomentors of the dissension which prevailed between the couple and the relatives of Franceschini.

When the Comparini had reached Rome, ill-contented as they were with the house of their son-in-law, for whom they now saw they had sacrificed their daughter, they did not know how to hold their peace about that matter, of which they themselves had been the cause. All the more so when they were harassed for the remainder of the dowry, beside the fact that they saw the rest of their property in danger. While affairs were in this state a Jubilee¹⁰² was announced; under these circumstances Violante Comparini revealed in confession¹⁰³ that Francesca Pompilia, who was married to Franceschini, was not their daughter, but that the birth had been pretended. She had in fact been born of a poor widow, a foreigner,¹⁰⁴ and had then been adopted to bring it about that the reversionary interest¹⁰⁵ would fall to their house, and hence to make good the many debts of her husband.¹⁰⁷ When the confessor heard this, he charged her to reveal all the affair¹⁰⁴ to her husband himself. Violante obeyed, and Comparini was greatly surprised at it, and rebuked his wife sharply. He then submitted the matter to judgment before Monsignor Tommati,¹⁰⁶ and the following was spoken in sentence: It should be maintained that Francesca Pompilia shall be and is in quasi-possession of her relationship as daughter.¹⁰⁸ Therefore appeal¹⁰⁴ was taken by the Comparini to the Tribunal of the Sacred Rota, but the suit still remains undecided.¹⁰⁵ In the meantime the Franceschini, seeing that they had been deluded by this circumstance, since they could not get possession of the residue of the dowry, redoubled their cruelties to the poor Pompilia even to the point of threatening her with death. Hence she was very often obliged to save herself by fleeing into some other house, or before the authorities,¹⁰⁶ or even into the presence of the Bishop,¹⁰⁹ whom she finally begged to save her by putting her in some monastery. But this prelate thought it better to send her back¹⁰² to her husband's home, urging him not to mistreat her.

When the unfortunate woman saw that the admonitions of this Bishop had been useless, and that this way of softening the heart of her husband and his relatives had proved vain, and when they reproved her for sterility¹⁰⁶ and for coquetry,¹⁰³ and for other faults of their own imagining, she betook herself to an Augustinian, Romano,¹⁰⁴ that he might write to his Superiors or to her parents to find some provision for her. But although the Father promised to do as she desired, his letters never reached their destination. The wretched woman was therefore desperate, and determined to get to Rome in some manner or other. She told the whole matter to Canon Conti,¹⁰⁵ a relative of the Frances-

chini, to whom she made a most pathetic picture of her situation. He was moved thereby, and answered that he would aid her, as he did by offering to have her taken to Rome by Canon Caponsacchi, his friend, since he himself ought not and could not do it. When the circumstances had been told to Caponsacchi,²⁸ he was opposed to it for fear of incurring the anger of the Franceschini;¹⁸² but when he had been urged both by Conti and the woman, he consented thereto. And on the last Monday of April¹⁸⁴ the wife arose from bed as soon as day dawned,¹⁸⁵ without her husband knowing about it. She took some things of her own,²⁰⁰ some jewels, and money, left the house, and at the gate of the city found Caponsacchi, who was awaiting her with a carriage.¹⁹² They mounted together and set out on the road toward Rome.

When Franceschini awoke and discovered the flight of his wife, as he already suspected that she had started for Rome, he began to pursue her, and on the following Tuesday [should be Wednesday] overtook her at Castelnuovo in the post-house,²¹⁰ where she was in company with Caponsacchi. The young woman was not at all terrified at the sight of her husband, but on the contrary she mustered her courage and reproved²¹⁸ him for all the cruelties practiced upon her, because of which she had been forced to this step. Then Franceschini was thunderstruck, and did not know how or what to respond. Hence he thought it best to have recourse to the authorities. The fugitives were arrested by the Governor of the place, and both of them were taken to Rome and placed in the New Prisons,^{235 345} and were charged with adultery because they had run away together. He tried to prove the charge by certain love-letters²³⁹ which had been found, and by the deposition of the driver.²⁰⁶ But as the adultery was not proved, the Canon was condemned for three years to Civita Vecchia, and the wife was shut into the monastery of the Scalette²⁷⁶ on the Lungara.²⁷⁸

When the husband therefore saw that this had not helped him in gaining the dowry, he decided to go back to his own country,²⁵⁶ leaving the care of his case in the hands of his brother, the Abate, who was in the service of a Cardinal. But although the Abate tried by many a turn to succeed in his intent before the tribunals, he could not achieve it. Hence he also decided to leave Rome. And he was spurred all the more by its becoming known that his sister Pompilia was with child.²⁸³ For this reason, the Governor of Rome had constrained him to consent that she should keep her own home as a prison, under security of 300 scudi to present herself at every demand of the Tribunal. The Abate indeed was unwilling to give his consent²⁸⁸ unless Pietro Comparini should first assume obligation, by an official document, to furnish her with food.²⁸⁷ And then, when he had obtained the permission of his Cardinal, he sold his furniture and books, and when he had made them pay over the 47 scudi which had been found upon Pompilia at Castelnuovo he left Rome.²⁹⁴ After that Pompilia bore a son,²⁹⁹ whom she named Gaetano,²⁰ after the saint to whom she made her vows.

Franceschini, who was now overwhelmed with manifold troubles, and was urged on now by honor and again by self-interest to take vengeance, at last yielded to his base thoughts and planned to kill his sixteen-year-old wife and her parents. When four other criminals had been admitted to the scheme, he left Arezzo and on Christmas eve reached Rome.³¹⁷ He stopped at Ponte Milvio,³¹⁸ where there was a villa of his brother. There he remained in hiding with his followers until a time opportune for the execution of his designs should come.

They spied out all the ways of the Comparini family, and on January 2,³¹⁹ which was Thursday,³⁰¹ at about seven o'clock³²⁰ in the evening, he approached the Comparini home with his companions. He left on guard at the street door

Biagio Agostinelli³¹⁵ and Domenico Gambassini, and knocked at the door. When he had said that he brought a letter of Canon Caponsacchi³¹⁶ from Civita Vecchia the door was opened to him. Immediately this cutthroat Franceschini, assisted by the other two criminals, leaped upon Violante who had opened it³¹⁷ and struck her dead to the ground. Pompilia in this crisis³¹⁸ extinguished the light, hoping thus to escape the assassins, and ran to the neighboring door of a locksmith crying out for help. But when she saw that Franceschini was provided with a lantern she went to hide under the bed; but she was dragged from there, and was barbarously slain with 22 wounds³¹⁹ by the hand of her husband. Not content with that, he dragged her to the feet of Comparini,³²⁰ who was likewise wounded by one of the other assassins, and was crying out "confession."³²¹

When the uproar of this horrible slaughter was heard abroad,³²² people ran thither, but the criminals succeeded in escaping. But in their haste one of them left his cloak, and Franceschini his cap,³²³ which betrayed him afterward. The unfortunate Francesca Pompilia, under the burden of such wounds as those with which she had been cut to pieces, implored the Holy Virgin³²⁴ for the favor of confession, and obtained her prayer. Hence she survived some little while and was able to tell about this horrible crime. She told that after the deed was done her husband had asked of one of the cutthroats who had done the murder with him, if she were indeed dead. When that one had assured him, he replied: "Let us lose no time,³²⁵ but return to the vineyard." And so they made their escape. In the meantime the police had been summoned, and came with a captain. A confessor was quickly called and also a surgeon who gave his attention to the luckless girl.

When the Governor had been informed of the outcome, he immediately despatched Captain Patrizi to arrest the criminals. *When the posse³²⁶ arrived at the vineyard,³²⁷ he found that these were no longer there, but that about an hour ago they had left in the direction of the highway.* Then Patrizi followed without interrupting his journey, and when he had reached the inn he learned from the host that Franceschini had demanded horses with threat of violence,³²⁸ but they had been denied him, because he lacked the necessary order.³²⁹ Hence he had traveled afoot with his companions toward Baccano.³³⁰ Patrizi continued his march,³³¹ and after taking the necessary precautions arrived at the tavern of Merluzzo.³³² There he found the assassins, who were straightway arrested. On them were found, still stained with blood,³³³ those daggers with which they had done the murders, and upon Franceschini were found 150 scudi in money. This arrest indeed cost the life of Patrizi,³³⁴ because having been overheated and wounded with a slight scratch he died in a few days.

Franceschini's dagger was of a Genoese pattern,³³⁵ triangular, and with certain hooks made in such a way that in wounding they could not be drawn from the wound without such laceration as to render the wound incurable.

When the criminals were known to be at Ponte Milvio, in that very inn they were heard on their preliminary examination by notaries and judges sent there expressly, and satisfactory confession was had.

When the capture of the delinquents was known in Rome, a countless throng of people rushed thither to see them, while all the criminals were tied to their horses and conducted to Rome. It is told that Franceschini, while making the journey, asked one of the officers how in the world the crime had ever been discovered.³³⁶ And when he was answered that his wife, whom they had found still living, had revealed it, he was so astounded that he was, as it were, deprived of his senses. About five o'clock in the evening³³⁷ they reached the prisons.³³⁸ A certain Francesco Pasquini, of the town of Castello, and Alessandro Baldeschi of the same town, both

of them 22 years old,⁴¹⁴ along with Guido Franceschini had been the slayers of the Comparini. And Gambassini and Agostinelli were those who had stood guard at the street door.

In the meantime there were exposed in San Lorenzo in Lucina⁴¹⁵ the bodies of the assassinated Comparini, who were so disfigured, and especially the wife of Franceschini, by wounds in the face⁴¹⁶ that they were no longer recognizable. The unfortunate Francesca, when she had taken sacrament and had pardoned her murderers, and had made her own will, died, not yet having completed her seventeenth year. This was on the 6th⁴¹⁷ which was the day of the Epiphany. She was able to justify herself against all the calumnies inflicted by her husband. The surprise of the people at seeing the said bodies was great, because of the atrocity of the deed, which truly made them shudder, seeing that two old septuagenarians⁴¹⁸ and a young girl of 17 years had so wretchedly perished.

As the trial of the criminals advanced, there were many arguments made on the matter, laying stress on all the more aggravating circumstances which accompanied this horrible massacre. Others also were made in the defense with much erudition, especially by the Advocate of the Poor, who was a certain Monsignor Spreti. He succeeded in delaying the sentence, because Baldeschi⁴¹⁹ made denial, even though "the cord" was administered to him twice, under which he swooned. Finally he confessed, and the others did likewise. They also revealed that they had planned to kill Franceschini himself,⁴²⁰ and to rob him of his money, because he had not kept his word to pay them as soon as they left Rome.

On February 22 was seen in the Piazzo del Popolo⁴²¹ a great platform with mannaia, and two great gallows,⁴²² which had been built for the execution of the criminals. Many stands were constructed for the accommodation of those curious to see such a terrible execution,⁴²³ and so great was the concourse of people⁴²⁴ that some windows brought as much as six dollars each. At the eighth hour [2 a. m.]⁴²⁵ Franceschini and his companions were informed of their death and were placed in the Consorteria. There they were assisted by Abate Panciatichi and Cardinal Acciajoli,⁴²⁶ nor did they delay in preparing themselves to die well.⁴²⁷ At the 20th hour⁴²⁸ [2 p. m.] the Company of Death and of Pity arrived at the Prisons. The condemned were made to go downstairs⁴²⁹ and were placed upon separate carts to be drawn to the place of execution.

The first to mount the cart was Agostinelli, the second Gambassini, the third Pasquini, the fourth Baldeschi, and the fifth Franceschini, who showed more intrepidity and composure⁴³⁰ than the others, to the wonder of all.

They left the Prison⁴³¹ and followed the Pilgrims Street, the Street of the Governo, of Pasquini, Piazza Navona, the Pantheon, Piazza Colonna, and the Corso.

The first who was executed was Agostinelli, the second Gambassini, the third Pasquini, the fourth Baldeschi, and the last Franceschini.⁴³² When the last named had mounted the platform, he asked pardon for his sins, and begged them to pray for his soul, adding that they should say a Pater, an Ave, and Salve Regina for him.⁴³³ When he had made the confessor announce that he was reconciled, he adjusted his neck upon mannaia and, with the name of Jesus on his lips, he was beheaded. The head was then shown to the people by the executioner.

Franceschini was low of stature,⁴³⁴ thin and pallid, with prominent nose, black hair and a heavy beard, and was fifty years of age.⁴³⁵ He wore the same garb as when he committed the crime—that is a coat of brown cloth, black shirt, a vest of goatshair, a white hat and cotton cap; clothed presumably as he had been when he had set out from Arezzo.⁴³⁶

The execution took place during the Pontificate of Innocent XII, in 1698.

the first time
in the history of
the world.

Secondly, the new life

is not created by man, but is given

**Trial and Death of
Franceschini and his Companions,**

for the

Murder of Comparini, his Wife, and Daughter,

Which happened during the time of Innocent XII.

NOTE.

The following additional account of the Franceschini murder case was discovered a few years ago in the Royal Casanatense Library, Rome (Misc. Ms. 2,037), in a volume entitled *Varii successi curiosi e degni di esser considerate*, containing thirteen pamphlets by various authors, most of them concerning famous criminal trials, the majority of them from Rome of the 17th century. The volume is in a hand of the early 18th century, and contains an indorsement to the effect that a copy was made from it in 1746. The Franceschini murder is the subject of the tenth narrative of the volume. Internal evidences indicate that it was written somewhat later than the secondary source pamphlet, by one who has considerable knowledge of the crime. It presents a better story and a fuller account of the motives of the actors, especially those of Abate Paolo and Violante, together with a number of additional matters of fact not contained in the Book. It never fell in Browning's way and hence has no immediate source-relation to the poem, but it does prove in some cases the accuracy of Browning's conjectures of unknown facts when definite data failed him.

The pamphlet was printed in translation by W. Hall Griffin in the *Monthly Review*, November, 1900. The present version has been made by the editor from a transcript of the original Italian executed by a friend in Rome.—C. W. H.

TRIAL AND DEATH OF FRANCESCHINI AND
HIS COMPANIONS,

FOR THE

MURDER OF COMPARINI, HIS WIFE,
AND DAUGHTER,

WHICH HAPPENED DURING THE TIME OF INNOCENT XII.

The Abate Franceschini,⁵⁰ born in Arezzo, Tuscany, of a family which was noble but poor of estate, having the cleverness to advance his own fortunes, proceeded to the city of Rome and was admitted by Cardinal Lauria into his household as Secretary of the Embassy. His inherent mental aptness won for him the favor of the Cardinal, who was held in great esteem in the Sacred College by reason of his learning, and who stood so high that he might well have aspired to the Papal Chair. In this lucky juncture, Abate Paolo, wishing to take advantage of his good fortune, thought to provide a wife for his brother Guido and to recoup his family fortunes by a rich dowry. Guido had served Cardinal Nerli⁵¹ in the same capacity, as Secretary of the Embassy; but either because he had not the good luck or the ability of his brother he left that service. Although Paolo knew that the idle state of his brother would be hurtful to his claims of dowry, he did not cease aspiring to a very advantageous one, flattering himself that his own distinction might make up for the shortcomings of his brother.

Now Guido had reached full maturity, was of weak temperament, ordinary in appearance,⁴⁵ of a disposition more gloomy than pleasant, and moreover was of scant means. Hence, unless Abate Paolo should use his own influence, he could have little expectation for Guido. After having attempted several alliances of high rank, Paolo fixed his thought on Francesca Pompilia, the daughter of Pietro and Violante Comparini. As she was their only child, and as her parents were too far advanced in years to have other offspring, she would fall heir to a reversionary interest of 12,000 scudi,⁵² and he hoped that he could easily make the match, as the Comparini were rather inferior to him in birth.

A certain hairdresser⁵³ frequented the home of the Comparini with the familiarity admitted by those women who desire to make themselves appear more beautiful to their husbands' eyes than they are and which some husbands tolerate who rely too much upon the fidelity of their wives. Paolo considered this woman to be the best means for aiding his designs for the marriage of Guido, and the latter often went to her shop with the purpose of winning her confidence by odd jobs. When he had often turned the talk to the subject of

taking a wife, she told him one day he might readily apply for the daughter of the Comparini, for she had a suitable dowry, besides being heiress to a reversionary interest, and was of a small family connection, which were his very requirements. When through her efforts he had succeeded in achieving the marriage, it was understood he should reward her with 200 scudi. The hairdresser lost no time in broaching the matter to Violante,⁷⁹ who, anxious for the advancement of her daughter and for the establishment of her own interests, agreed to speak of it to her husband and, if the matter were as stated, to persuade him to effect it. Violante spoke to her husband⁸¹ about it and he did not reject the proposal provided that the vaunted riches of the Franceschini were verified, but he said this would have to be given in a written statement attested by well-known and reliable persons. When the hairdresser had carried back this word to the Franceschini, they sent a statement⁸² of their real estate in Arezzo, with an income amounting to 1,700 scudi, attested by persons well known to the Comparini and who confirmed it to them orally.

Abate Paolo, fearing lest this fortune might escape him, gave them no time to change their minds, and in order to make the matter surer he desired to secure it by the hand of Cardinal Lauria,⁸³ his patron, by whom he had the marriage agreement drawn up; for his Eminence was pleased to show kindness to the advantage of a man whom he regarded with some favor. Meanwhile Comparini had become better informed of the rank and property of the Franceschini and found them far different⁸⁴ from the preceding account, both in rank and in property. Therefore he had a warm dispute with his wife, who persisted in the marriage and declared that he had been advised by persons envious of the good fortune of one or the other house, and who wished to hinder it, and that she was not shaken in her original desire; for she was very sure, from other truthful witnesses, that the Franceschini were of the first rank of nobility of Arezzo, and not of the second,⁸⁵ as those had said, and that the property given in the list had been untampered with. But the more she warmed to the matter, the cooler became Pietro; for being very diplomatic, if he could not gain, at least he wished not to lose by the marriage of his daughter. But what does not a man lose when he allows his wife to rule him? He loved her so tenderly that from the first day of their marriage he had constituted her the arbitress of his wishes. Violante, nevertheless, fearing lest Pietro, in a case of such importance, might be more influenced by reason than by flattery, could suffer no delay in making secure the reversionary interest which another house could claim if the Comparini were without an heir;⁸⁶ she therefore resolved to have the marriage performed without the knowledge of Pietro. When she had secured the consent of the daughter, who was always obedient to her commands, and had made an appointment with Guido, she conducted her, suitably clothed, one morning to San Lorenzo in Lucina, and espoused the two.⁸⁵

Pietro felt the blow keenly, but being unable to find any remedy for it, he cloaked his anger⁸⁷ with the show of being displeased at not having been present, and this displeasure would cease in him with the joy of the nuptial feast, which should be in their house. He assigned to his daughter as dowry twenty-six bonds,⁸⁸ with future succession to the remainder.⁸⁹ On the very same day, after talking of the advantages which would result to both houses from the union of their interests, they decided upon the removal of the Comparini to Arezzo,⁹⁰ which followed in a few days, and with it the absolute administration of the property by Guido.⁹⁰

When they had reached Arezzo the Comparini were received by the mother and relatives of Franceschini with all that show of love which is customary

on such occasions. But very soon, from constant association, disturbances arose,⁶⁵ and thence they passed to hostilities. The mother of Guido, a proud, avaricious woman,⁶⁶ who governed the household despotically, took to stinting it even in the necessary food. This moved the Comparini to complaints, to which the Franceschini first responded with insults and then with threats. This was a thing Violante could not tolerate, for, being a woman, she had her own share of natural arrogance.⁶⁷ So she began tormenting Pietro, cursing the day when he had decided to move to Arezzo, laying the blame on him for all that of which she had been the cause. And Pietro, who was one of those men who let themselves be overcome by a couple of crocodile tears of their wives, instead of reprimanding her for the undertaking (although she had concluded the marriage against his wish and without his knowledge), entreated her affectionately to bear with patience the abuses, which would possibly cease when the Franceschini saw them defended by their daughter.

At that time [November 30, 1693] passed from this life to Heaven Cardinal Lauria, a churchman of merit beyond all praise. Then Abate Paolo⁶⁸ was elected Secretary in Rome of the Religious Order of Malta. At this the haughtiness of the Franceschini increased so much that they considered it grand good fortune for the Comparini to be considered their friends, not to say their relatives. Violante being no longer able to live under the proud command of another woman, since she had been in the habit of domineering,⁶⁹ as her husband had been subject to her wishes, so tormented him that she induced him to take up his residence in Rome again. For this purpose the Franceschini gave them a sum of money⁷⁰ sufficient for the journey and for the most necessary furniture in the home.

Scarcely had they reached Rome when, to the surprise of everybody, it was reported that Pietro had dispatched a judicial warning, in which he set forth that Francesca Pompilia was not really his own daughter⁷¹ and that therefore he was not obliged to pay the dowry.⁷² He brought the attestation of Violante his wife, who had declared that to check her husband's creditors⁷³ in the matter of the trust fund and to enjoy the income of the bonds, she had feigned to be pregnant⁷⁴ and, that her husband might not discover the trick, she agreed with him that when she became pregnant they should abstain from association until after the birth of their child. And so, on the very day of this pretense, they took separate bedrooms; still further, by well-arranged clothes, she feigned the swelling of the womb, and by suitable drugs made pretense of nausea until her time was come. She then took advantage of a day when Pietro was occupied in his lawsuits, to bring forth the pretended birth, which was well carried out by the sagacity of a midwife in the secret, who provided whatever was necessary. And that the house servant might not detect the trick, they sent him to the apothecary to secure certain medicines. At the same time the midwife went to get a little creature whom she had received the day before from a neighbor, who was already in the secret. When she had returned to the house she summoned a familiar friend of the Comparini from a window. Matters were so well arranged that when the woman arrived, there was nothing more to do than to make her believe what was not really so. And to trick more surely the thought of this neighbor, they feigned that when Violante wished to pass from the bed to a chair, she fainted into the arms of the woman by reason of her pains, since the midwife could not run up in time.

This unexpected act of Pietro, which became known in Rome immediately, was heard with less wonder than scorn. The just anger of the Franceschini would have undertaken due vengeance if it had not been mitigated by the hope

that, since Pompilia was not the true and legitimate daughter of Pietro and Violante, the marriage would be annulled²⁹⁷ and Guido's wounded reputation would be healed. But when he had taken counsel with several authorities and found they were of different opinions, he was unwilling to risk so doubtful an affair, in the promotion of which they would necessarily confess and presuppose that she was not the daughter of the Comparini, and by this confession they would be prejudiced in their claims to the dowry. They opposed the judicial notice and obtained for Pompilia the continuance of her quasi-relation as daughter²⁹⁸ together with a decree for the transfer of the dowry bonds. But Pietro appealed²⁹⁹ to the Signature of Justice so trickily that the Franceschini had the expense of the transfer, but not the enjoyment of the income, since they obtained from it not even a two months payment.

The unfortunate Pompilia was the victim of the hatred of these two houses; for she was left alone in Arezzo at the will of her husband, her mother-in-law, and her relatives, who were mortally offended at her parents, and she was hourly threatened with death. It so deplorable a state the courage even of a more mature woman would have failed, not to speak of that of a girl only sixteen years old. For she was innocent of the wiles of her mother and of the duplicity of her father and by her own good qualities she was worthy of tenderness rather than cruelty. The unhappy one suffered as best she could these tyrannies which were ever increasing, but despairing of all hope of peace, she often had recourse to the Governor of the City,³⁰⁰ that he might interpose his authority with the Franceschini. As this was of no avail, she threw herself at the feet of the Bishop,³⁰¹ who had Guido come into his presence and who tried to reconcile him. But Guido's anger increased all the more because of this public recourse, and he threatened Pompilia with certain death if she should ever try it again.

When the poor child saw every way to peace closed against her she appealed to Canon Conti,^{302 303} a relative of the Franceschini, who was very well informed of her wretchedness because he visited the house, and she begged him to save her life, which was in continual peril. He was moved to pity, for he knew that she had no other remedy than flight. As he could not personally assist in this, lest he would have to bear the hatred of the entire family connection, he suggested to her that the very person for such an enterprise was the Canon Caponsacchi,³⁰⁴ his intimate friend and somewhat related to him by blood, whose courage was no less ready to meet danger than to overcome it.

Pompilia accepted the counsel of Conti, who lost no time in opening the affair with Caponsacchi. He at first showed some unwillingness,³⁰⁵ as he hesitated to carry away a wife from her husband, even with the sole purpose of conducting her to her own parents. But when he had been fully informed of the insufferable abuses of Guido and his relatives his pity prevailed over all other considerations and he accepted the undertaking. Pompilia, who was eager for this, tried to win him by letters and amorous verses,^{306 307} yet always keeping herself true to her marriage vows, as one may read in her letters. In some of these she praises the modesty of Caponsacchi, in others she reproves him for having sent some octaves which were slightly reprehensible, and she urged him to keep unstained that nobility of which he boasted. On the day appointed for flight, with the assistance of Canon Conti, the two took their places in a carriage and traveled as fast as they could,³⁰⁸ without resting save when it was necessary to change horses. They arrived the second morning at dawn³⁰⁹ at Castelnuovo,³¹⁰ and, in spite of the fact that the host had assigned them a bed for repose,³¹¹ Pompilia seated herself in a chair and Caponsacchi went down to the stable to urge on the driver.

When Guido awoke after the flight of Pompilia and perceived that she was not in bed, he arose in a fury and, seeing the jewel-box open¹⁹⁸ and minus the jewels and money,²⁰⁰ which it had contained, he surmised what had happened to him. Accordingly on a good horse he sped along the Roman road and overtook the fugitives at the abovesaid inn of Castelnuovo an hour after their arrival. When Pompilia saw him, with that courage which desperation may arouse even in the weakest spirits, she seized Caponsacchi's sword which lay upon the table, unsheathed it, and thrust it at his life,²⁰⁷ calling him betrayer and tyrant. Guido, fearing lest her spirit no less than the valor of Caponsacchi might bring his death rather than revenge, turned his horse and rushed to the authorities.²²² He had the fugitives arrested and conveyed to the New Prisons,²⁵⁵ where he entered charge of flight and adultery against them.

The Abate Paolo who, as has been said, was the Secretary of the Religious Order of Malta in Rome, made noisy recourse for his honor to the Pope,²⁶⁰ and he put a petition before Monsignor Pallavicino, the Governor, demanding that he declare Caponsacchi the seducer of his sister-in-law, and both of them guilty of adultery, and that his brother for that reason was entitled to gain the entire dowry. Legal proceedings²⁶⁹ were instituted against them according to the most rigorous forms of law, but no proof of guilt was found against Caponsacchi²⁷² and Pompilia except the love letters²³³ written at the time of the arranging of the flight, the undertaking of the flight itself, and the deposition of the driver.²⁰⁸ For the latter declared that he had sometimes seen, when he had turned back during the journey, that they were joined face to face, that is cheek to cheek, a matter which did not make full proof of fault, since the rough roads and the headlong speed of the journey jostling them about²⁰⁹ might have been the cause of it. Wherefore the Court deemed it prudent and just to sentence Caponsacchi to three years relegation in Civita Vecchia for his rashness²⁷² in running away with a wife from her husband, even though the motive was pity. While the case of the Franceschini against Pompilia was on trial, Pompilia was transported with their consent, as their prisoner, into the Monastery of the Scalette²⁷⁶ on the Lungara,²⁷⁸ with the obligation that Guido, her husband, should provide her food.²⁸² There, after a little while, it was discovered that she was pregnant and as it no longer comported with the reverence of that place that she should remain there,²⁸³ with the consent²⁸⁸ of Abate Paolo, who had power of attorney for his brother, Monsignor the Governor ordered that she should pass into the home²⁸⁴ of the Comparini, her parents, under security of 300 scudi to keep it as a secure prison; and he declared that Guido's obligation for her food should cease²⁸⁷ the very day she left the monastery.

This cause, in which the Franceschini were not obliged to have hand for mere honor's sake, was seen to have its chief motive in selfishness. Therefore there was not a company where the conduct of one or the other party was not censured. For this reason the Religious Order of Malta gave secret intimation to Abate Paolo that he should resign his office. At the loss of this honorable post, rein was given to the evil tongues of his adversaries. This put Abate Paolo in such straits that, ashamed to meet his dearest friends, he decided to leave Rome³⁰⁴ and to pass to a clime where information of the dishonor that so afflicted him would never come.

When Guido was informed of the departure of his brother and of the obligation resting on him of repairing the honor of his house, he thought³⁰⁵ that to go into voluntary exile, as his brother had done, would only prove the baseness of his own mind. For he had been justly charged with this since at the time he had overtaken his wife with her abductor he had failed in that very place to take the vengeance²²² which was demanded at his hands.

In due time Pompilia had given birth to a son³⁰⁹ who was sent out of the house by the Comparini to nurse.³¹⁰ Thereupon everyone believed, and especially Violante, that the ties of blood would move Guido to a reconciliation with his wife. For in spite of their declaration that Pompilia was not their daughter, the minds of the Comparini might still be disposed to some reconciliation. But Guido's thought was quite different, for he was continually stirred, even in the absence of Abate Paolo, to plot the removal from this world of the entire memory of his dishonor by the death of Pompilia, Pietro, and Violante, and possibly of still others.

Guido had in his employ, in the country,³¹¹ a daring and wicked laborer³¹¹ [Alessandro Baldeschi] to whom he often exaggerated the shame which his wife and the Comparini had brought upon his house. To him Guido revealed that with his assistance he wished to purge with their blood the stain to his honor. The cutthroat straightway accepted and declared that, if there were need of other company, he had three or four friends for whom he would vouch. Guido replied that he should take three bold and trusty ones to make sure against any possible resistance and should use all care to secure them at the lowest possible price.

When all had been agreed upon,³¹² and arms suitable for the affair had been prepared,³¹³ Guido, with his four companions in disguise, secretly took the road to Rome. Reaching the home of the Comparini at eight o'clock³¹⁴ in the evening, one of them knocked at the door, and when Pietro responded the murderer told him that he had a letter to give him which had been sent from Civita Vecchia by Caponsacchi. When the women heard this they told Pietro to have him come back again next morning, urging him not to open the door. But he was curious about the news from Caponsacchi and when the murderer replied that he could not come back in the morning, as he was obliged to leave that night, he opened the fatal door and thereby admitted his own death and that of Violante and Pompilia.

Guido in a transport of rage leaped in with two companions, leaving the others on guard. They first dealt the poor old man many blows and deprived him of life before he could lift his voice.³¹⁵ Scarcely had the unfortunate women seen this when, transfixed with like wounds, they suffered the same fate. Upon the unfortunate Pompilia fell the blows of her husband,³¹⁶ accompanied with countless insults, and after he had trampled her several times under foot and wounded her anew, not trusting his own fury, he told his companions to see if she were really dead. One of them lifted her by the hair³¹⁷ and let her fall again, and assured Guido that she was no longer alive.

When this barbarous murder had been concluded and the money agreed upon had been paid to the cutthroats, Guido wished to leave them, but they would not allow him to desert them for fear that one might kill another, as frequently happens for hiding such misdeeds. Or else the murderers, while united with their leader, had agreed to kill Guido³¹⁸ as they thought he might have a large sum of money. Hence they did not consent to his leaving them and they took the road toward Arezzo together, which they agreed to make on foot,³¹⁹ as they could not secure posthorses.

From these repeated wounds Pietro and Violante were quite dead, but not Pompilia, though her wounds were more numerous. For because of her innocence she was especially helped by the divine mercy³²⁰ and she knew so well how to feign death³²¹ that she deceived the murderers. When she saw that they were gone, with her dying breath she mustered sufficient strength of voice to make the neighbors hear her cries for help.³²¹

They found her in the last extremities and eagerly ministered first to her soul and then to her body. Her wounds were so numerous and of such a nature

that although they did not immediately kill her, they made her death certain. This occurred a few days later, to the sorrow of all those who assisted her and who had knowledge of this pitiable case. The fortitude with which she suffered the pains of her treatment caused as much wonder as her resignation to the Divine Will caused love. She not only did not blame the cruelty of her husband, but with fervent prayer she besought God to pardon him.³³⁹ The compassion of her assistants both for her soul and for her body, I attest by the following sworn statement concerning not only her innocence, but the happy passage of her pure soul to heaven.

[Then follow the affidavits of Fra Celestino and others given on pages lvii-lx.]

Divine justice, which would not suffer so atrocious a deed to go unpunished, caused the criminals to be overtaken by the authorities at the break of dawn³⁴⁰ at an inn a few miles from Rome. For when they had eaten a little, they went to sleep by the fire,³⁴¹ fatigued by the journey and overcome with drowsiness. The police rushed violently in upon them and, pointing carbines at their breasts, assailed and bound them at once. They were straightway taken to the New Prisons³⁴² and the Governor apprised the Pope³⁴³ of this barbarous murder and of the arrest of the guilty. He gave commands that, without delay and with all rigor, trial should be brought, this being a case which, by reason of the consequences which might arise from it, should be examined into with very special attention.

Far less torment³⁴⁴ than would seem to be necessary had to be applied to get the confession of the murderers and of Guido, who more than the rest had stood by his denial. But at the sight of torment he had not the heart to resist longer and confessed fully, saying indeed that the crime had had no other motive than the reparation of his honor which had been so publicly offended. This was a matter which any common man would have undertaken, not to speak of himself, who was a gentleman; and if on his first examination he denied the truth of this, he had done so lest he might injure his companions, who had aided him in a deed worthy of all sympathy, because he had honor as his sole end.

With the confession of Guido and its ratification by the rest, the process was finished, and they were sentenced,³⁴⁵ the cutthroats to the gallows and Guido to mannaia, a means of death conceded rather out of respect for his being in clerical orders than for any other reason. The Advocate and Procurator of the Poor had written so ably in their defense on the point of honor that there is no memory of more learned arguments. But the features of the crime were so many (and all of them punishable with death) that they were overcome no less by their nature than by their number. Among such features was the bearing of arms³⁴⁶ prohibited under capital penalty, the death of Pietro and Violante³⁴⁷ who were not accomplices in the flight of Pompilia, the murder while a law-suit was pending,³⁴⁸ and in their own home,³⁴⁹ which place the authorities had with the consent of Guido assigned to Pompilia as a secure prison.³⁵⁰ The many other weighty charges which displayed the great learning of the defenders were the just cause of the death of the accused. Yet with the usual hope of all those who make confession of capital crime, Guido flattered himself that he could save his life by reason of his honor. At the unexpected announcement he did not give up to such a frenzy as frequently follows in those who experience so terrible a disaster, but, as if stupefied, after a few minutes he heaved a deep sigh, accompanied by a few tears, which by their extraordinary size showed dying symptoms. He said: "I well feared a heavy sentence, but not that of death. My crime is great, but love of honor has never suffered me to perceive what it was until now that sentence has

been passed, which I hold in such reverence that I wish to appeal only to God, to whom alone I turn for the only mercy. Without His will I should never have reached this awful pass, which may be a comfort to me and not a source of bitterness, that I may gain by entire resignation to His will the merit of His pardon." And then he⁴³ threw himself into the arms of the compassionate Frati and showed such signs of true contrition that their prayers were accompanied by tears rather than by exhortations.

His four accomplices did not submit themselves with the same readiness,⁴³⁷ for as they were of lower birth so were they less swayed by reason, which would render them impulsive to the punishment they had merited. The oldest [Baldeschi] and youngest [Agostinelli] were the most obstinate, the one from having a heart hardened by so many years of evil life, and the other being all too sensitive to so harsh a punishment for a single crime, in the very flower of his youth, without ever having spilled a drop of blood, and with the sole fault of having been induced to stand as guard at a door through which Guido had had to pass, to purge himself of the stains to his honor by the blood of his foes. As the hour of execution drew nearer, the stubbornness of these wretches so increased that the Frati despaired of their repentance. At last the Divine Mercy, which works miracles when we least expect it, entered their hearts and gloriously demonstrated His omnipotence. They finally trusted in God, and the memory of those faults which had made them obstinate, and which were now illuminated by the Divine Grace that disposed them to penitence, fitted them for pardon. When these souls had been secured for God after such a hard contest, the execution passed from the New Prisons at Tor di Nonna to the scaffold raised in the Piazza del Popolo in view of the gate and of the Corso. In the midst was the block on a lofty scaffold,⁴⁴ larger than usual and with steps made with particular care; on the two sides the gallows were placed at equal distances. In spite of the vastness of the Piazza, not a single foot was left which had not been occupied by stands,⁴⁵ which were covered with tapestry and other ornaments forming a theater for festal celebrations rather than for a solemn tragedy.

His four companions preceded Guido, each of them in a separate cart,⁴⁵⁸ assisted by the devotion of the accustomed Frati [The Brotherhood of Death] and followed by a countless concourse of people praying for a blessed departure, which in view of their contrite resignation seemed not at all doubtful and even a certain hope. Rarely did Guido Franceschini turn his eyes from the crucifix,⁴⁵⁹ except when nature, overwearied by the steadfastness of his gaze, made him turn away his head but not his heart, which had been wholly given to his Creator so that none was left for himself.

When he had reached the Piazza di Pasquino, and the cart had stopped before the church of Agonizzanti, where on days of public execution it is customary to offer the Sacrament to the delinquents condemned to death and therewith to bless them, Guido knelt and began to recite, in a voice quite audible to bystanders, certain verses of the *Miserere*,⁴⁶⁰ and among them this, "Hide thy face from my sins and blot out all mine iniquities." He accompanied this with such signs of sorrow and penitence that the people by their tears showed no less grief than the one condemned.

With equal devotion his companions received the same blessing, but the behavior of the youngest [Agostinelli] was remarkable beyond belief, who beside himself with his love of Heaven and of God, by his expressions which exceeded his own capacity, confounded the wisdom of his pious assistants.

Thence by the most densely populated streets⁴⁶¹ they continued the journey to the Piazza del Popolo, where they all died, Guido last, with those acts of

contrition which their preparation had shown. As the youngest had displayed most blessed signs during life, so it pleased God that he met his death likewise, for at the moment the executioner did his work, he clasped between his breast and his hands the image of that crucifix whereby they had become certain of Divine Pardon. This assured the people of his salvation as his untimely death had aroused their pity.

Rome has never seen an execution with a greater concourse of people, nor does it remember a case on which there was such general talk as on this. Some defended the Comparini, because they had suffered abuse, others the Franceschini as it was a matter of honor. But, on looking at the matter dispassionately, they were adjudged to be equally guilty, except that Pompilia, who was entirely ignorant of the truth, was without blame; for she had consented to the marriage at the command of her mother without the knowledge of her father, and had fled from her husband for fear of death with which he had often unjustly threatened her.

From trickery arose the union of these two houses, from the Franceschini in frauds regarding property they did not possess, from the Comparini by the pretended birth, or by this very pretense if the birth were real. The trick arose from greed of gain in Pietro to secure the trust moneys for himself, and in the Franceschini to minister to their own ease; so all was done contrary to laws both human and divine. Hence a bad beginning was followed with a wretched ending, as has been told above.

The Making of a Great Poem.

An Essay

On the Relationships of The Ring and the Book
to the Old Yellow Book.

Lovers of dead truth, did ye fare the worse?
Lovers of live truth, found ye false my tale?



THE MAKING OF A GREAT POEM.

"So absolutely good is truth."

I. *The Mystery of Poetic Creation:*

The philosophy of art concerns itself with some of the most profound truths of humanity, and the creative act and creative artist alike have always fixed the attention of the thoughtful. In olden days, the divine afflatus endowed the *vates* with a sacredness which all men revered. Bards wandered safely amidst even the more barbarous conditions of medieval life. Artists have continually invoked divine assistance, whether of the Muses or of the heavenly Urania. The scientific spirit of our latter day may not regard with religious devotion this divine mystery of creative art, but it is still probing with no less interest the meaning and power of the creative activity of the human spirit. This diverted regard has shown itself largely in the increased study of biography and of source-materials, which have been sought and sought again for an explanation of the mystic power we call genius. The biographical study of artists, which has increased so greatly in recent years, has been no mere idle curiosity concerning personal gossip; and the reader has turned in disappointment from many a biography, from which the personality of the artist—the one all-important *x* of the problem—has utterly escaped. The biographer's attempt to trace power to the facts of heredity, education, and environment seems to fall far short of this purpose. And so the mystery of creative genius gets but a half answer in biography.

Latter-day critics have also turned in their research to possible revelations from source-studies. How far does the artist's raw material control or master his creative activity? What is the difference between the material and the final product? What personal activity of the artist effected this change? We soon find that art is far more than matter of fact. It is personalized, subtleized fact—fact raised to a higher coefficient by the intense play of genius upon it; it is fact athrob with the deeper truth of life, which is part of the endowment of the great artist. Some alchemizing power, which is a function of the artist's personality, has wrought the change. And this power is little less mysterious now than when in olden days it was called inspiration. The play and the illumination of this power differ indeed with the individual artist, and the general problem of its place in art assumes new aspects with each

genius studied. Nineteenth century criticism has already examined, so far as lay in its power, the artist's work upon his originals. Beginning with Shakespeare's source-books, it has followed on to those of Chaucer, Goethe, Milton, Tennyson, and others. Each of these studies has served to emphasize the import in art of the inalienable personal force of the man of genius. He has succeeded in no mere lucky find of what would have made another man great. We are told that the story of Evangeline was given originally to both Longfellow and Hawthorne, and that for a while there was a question as to which should use it. But we can not doubt that what has fixed the world's attention on Evangeline would have been lacking if even Hawthorne had undertaken his version of the story. Now source-study can in no sense fathom or explain away the element of personal power in creation, but it can at least differentiate the peculiar master-power of each artist; it can make clearer the Miltonic, the Shakespearian, the Chaucerian touch. For in art, as in life, we find important data for estimating the man in considering the material upon which he reacts and in which he takes a peculiar interest. Many a secret of personality opens at the sesame of a master passion or of a dominating interest, and slowly from the contemplation of these various artists at work we may evolve a philosophy of creative art.

With a view toward a fuller solution of this master problem, and toward a clear comprehension of the peculiar genius of Robert Browning, the present source-study of his chief poem has been undertaken. For Browning is one of the most original and vital of our English poets, and the play of his personality in its creative moments can not fail to interest the student of art and the student of the human soul. In this comparison we may trace the creative reaction of Browning through a period of four years upon a mass of chaotic, unpromising material. Browning's habits as an artist come gradually into clearness as we follow this study to its ultimate outcome. We see his reverence for truth, his intense human sympathy, his grotesquerie, his realism, his insight into motive, and his easy mastery of countless details. While his intellect grasped every fact of this history, his insight and imagination had free sway; and he felt no check to his power in his abiding conscientiousness in the use of fact. Still further, this study does much to explain the creation of the unique genre which Browning has developed from his practice of monologue writing for *The Ring and the Book* as his crowning work.

II. The Ring and the Book as the Macrocosm of Browning:

In the wide range of the work of Robert Browning no single poem can rival *The Ring and the Book* in scope and manifold power. The subject had fallen to his hands at the very fullness of his maturity by

" predestination," as it seemed to him. In the poem, as he planned his treatment, there was opportunity for every phase of his peculiar genius, so that the completed masterpiece became the macrocosm of his work. Fortunate indeed is the artist who at the climax of his career meets the subject that will exact all and express all of himself. Browning's whole artistic life had been tending toward some such large expression of itself, and the poet did not hesitate to invest lavishly of his creative energy, confident of the final power of this work. In his early manhood he had written long poems—the biographies of his aspiring heroes; but they had been intense and narrow, eloquent but chaotic. Moreover, Browning the humorist and realist is utterly lacking in *Paracelsus*, *Sordello*, *Strafford*, and we may almost add the dramas. Then follows a quarter of a century devoted to shorter subjects, from many phases of life, but none of these singly can "all-express him." They display widely varied powers. His humor laughs through Lippi, his romanticism follows the flight of the Duchess, his satire pierces Johannes Agricola, his philosophy falls from the lips of Rabbi Ben Ezra, his analytic keenness in character pierces the episcopal robes of Blougram, his grotesquerie runs riot in Caliban, his hero-worship exalts Luria, and his personal devotion utters itself in *One Word More* and *By the Fireside*. These poems, gathered chiefly in *Men and Women*, 1855, and *Dramatis Personae*, 1864, had firmly established the Poet's reputation, so that he stood at least a sure second to the famous Laureate. None of them represent long-protracted thought and labor.

At this juncture the story of Pompilia and Caponsacchi and Guido fell in his way. He might have made of it a dramatic romance of a few hundred lines. He preferred to give it an importance in his art far beyond anything he had ever essayed. This had not been the cherished purpose of a lifetime, as were the *Paradise Lost*, the *Divina Commedia*, the *Faust*, or the *Idylls of the King*. But Browning almost instantly realized the fitness of the subject for his *magnum opus*—though it had none of the prestige of the century-laden legends which fascinated these other poets. Hence he treated it in no cursory way, but continued working on it till the poem had reached epic dimensions, till he had devoted to it four of his ripest years, and till it had deployed every energy of his nature. He has nowhere displayed more telling irony, in which he is so eminent, than in Bottini; more profound philosophy than in the Pope; more tender understanding of woman than in Pompilia; nor sadder nor wiser insight into the depths of sin than in Guido; nor a finer conception of true heroism than in Caponsacchi. The poem ranges through many emotional keys. It contains long passages little removed from prose, save in form, but it rises to heights of impassioned poetry seldom attained by Browning. It is therefore what the long poem should be—expressive of the whole nature, the whole art, the whole

view of life of the Poet. That he himself saw here his greatest subject * is evidenced, apart from this excessive expenditure of time and skill upon it, by the motto from Pindar which he inserted in the "old yellow book":

Her strongest-winged dart my Muse hath yet in store.⁵³⁸

He would, therefore, summon every power to his new theme and spend more of himself on it than on any other subject with which he had ever grappled. And yet, though written broadly and deeply, it was simplified in method and in style until it was fairly directed to the average intelligence of thoughtful readers. It can in no sense be regarded as a critics' bone of contention, but is one of the most lucid of all of the Poet's works. Hence it is no matter of surprise that the better critical appreciations of Browning which have appeared of late years, such as those of Brooke, Dowden, Chesterton, and Herford, have given the poem a place of greatest importance. It stands eminent, we do not hesitate to say preëminent, among the longer English poems of the nineteenth century.

III. The Poet and the Source-study of his Poem:

With a self-consciousness of his artistic functioning, not unusual in Browning, the Poet insistently calls attention to the source of his long poem. The very title includes the Book; and *The Ring and the Book* is symbolic of the artist's use of his raw material for the purpose of his art. In the introductory book of the Poem, the Poet describes the finding and the nature of the Book with such particularity that the reader naturally queries,

is there book at all,
And don't you deal in poetry, make-believe,
And the white lies it sounds like?

The sham book of memoirs or the book of letters is such a commonplace in fiction that its mere mention excites the incredulous smile. De Foe was a past-master in this art of sham originals, and Hawthorne has made this device a door of entry into his *Scarlet Letter*.

But Browning had long given his readers the impression of a somewhat different art—of a thoughtful grappling with fact as he found it—of a straightforward truthfulness of art. "Truth-teller was our first great Alfred called, truth-lover he" might well have been said of Browning, as it was said of Tennyson. Yet no one has had at hand the material to prove his marked fidelity to the fact-basis of his imaginary superstructure in *The Ring and the Book*. The Book, indeed, is no fiction, but a veritable fact, shaping the Poet's whole story.

* "I know he thought *The Ring and the Book* was going to be his greatest work long before he had finished it. * * * he often told me while writing that it would be the longest poem in the English language. He was more and more interested in the work as it advanced."—Letter from Mr. R. B. Browning.

Nor is he satisfied to consider its contents as crude raw material. To him they are "pure gold"—"in this book lay absolutely truth"—

The untempered gold, the fact untampered with,
The mere ring-metal ere the ring be made!

And he continues,

From the book, yes; thence bit by bit I dug
The lingot truth, that memorable day,
Assayed and knew my piecemeal gain was gold.

His insistence on his figure of "the gold" shows how highly he valued the contents of this old volume. They were truth—truth that challenged him, truth that called forth all his mastership, truth that tested all his insight. And "truth" is a master word throughout the Poem, to which speaker after speaker returns with strong insistence. The philosophy of life's truth is one of the most important phases of the thought behind the story and the characters of this Poem.

Still further the Poet was intensely interested in the psychological process whereby this "gold" of truth was fashioned into the "ring" of art. No critic nor philosopher could show a closer interest in this play of poetic genius upon its material. He would pluck out the heart of this mystery—a mystery which fascinated him all the more because it had been his own familiar for half a lifetime. He who had taken apart the "wheels" of so many souls, now looked curiously into this subtlest power of his own mind. What was the process of this transmutation? Whence was its power? The material was not worthless in itself; but upon it the spiritual power of the artist had to work with life-giving mastery until he too became a creator and reached man's highest function.

No less, man, bounded, yearning to be free,
May so project his surplusage of soul
In search of body, so add self to self
By owning what lay ownerless before,—
So find, so fill full, so appropriate forms—
That, although nothing which had never life
Shall get life from him, be, not having been,
Yet, something dead may get to live again,
Something with too much life or not enough,
Which, either way imperfect, ended once:
An end whereat man's impulse intervenes,
Makes new beginning, starts the dead alive,
Completes the incomplete and saves the thing.

A third of a century before, in *Sordello*, line 1212, Browning had said—

they are fain invest
The lifeless thing with life from their own soul.

And Swinburne's words from the Prologue of *Tristram of Lyonesse* state this same truth:

and give
Out of my life to make their dead life live
Some days of mine, and blow my living breath
Between the deep lips of forgotten death.

This creative power seemed to Browning to be the artist's highest prerogative:

But here is the finger of God, a flash of the will that can.

It masters death in these moribund or extinct relics of life, and Browning does not hesitate to liken it to the miraculous, life-giving power of Elisha. (RB, I, 760-71.) This power lay in the artist's "surplusage of soul," in the abundant life of the spirit, in the ability to "fuse his life with that inert stuff," till the story was athrob with a new life, subject to the shaping and molding hand which would reduce it to art form. Such creative vitality ever distinguishes the genuine artist from the mere technician:

The life in me abolished the death of things,
Deep calling unto deep: as then and there
Acted itself over again once more
The tragic piece.

A spirit laughs and leaps through every limb,
And lights my eye, and lifts me by the hair,
Letting me have my will again with these.

This creative joy is akin to the creative joy of God as elaborated by the Poet in the last book of *Paracelsus* (lines 642-80), and man shares thereby the high prerogative of Deity, he himself rising to godlike power. Such is the dignity and the glory of creative art in the feeling of Robert Browning.

We may see, therefore, that the Poet himself invites, nay allures, his readers on beyond the Poem to the Book, in which he had found the story, and to a study of the poetic method in changing "book" into "ring." And few readers of the Poem have failed to respond to him and to raise silent question as to what truth the Poet had found in his documents. What is the gold of fact? How much is alloy? What was Browning's mastership over his material? Did he disregard the integrity of fact? Did he expand his masterful tragedy from a few scattered hints, or did he owe his source-material a large debt for even the form and expression of his poem? Such questions will find abundant satisfaction in the perusal of the Book itself, and the study of "ring" and "book" side by side throws a flood of light on the individual artistic mastery of Robert Browning.

IV. The Peculiar Features of the Present Source-study:

There are, moreover, certain peculiar phases of interest in the source-study of *The Ring and the Book* as compared with that of most other important poems.

Almost all the important extensive poems have had a long ancestry either in oral or written literature. Our primeval epics grew up through cycles of ballads. Many a literary ancestry is traceable back through centuries of varying forms, until the origin is lost in the mists of the prehistoric. Lowell has put this fact in his own way when he says "All the good stories came out of the ark." The Arthurian legend, which Tennyson used as basis of his own longest poem, is typical of such stories, and of the making of books on or from it there is no end. *The Earthly Paradise*, which was written and published in the same years as *The Ring and the Book*, is a patent retelling of world-old stories. But, unlike all of these, the pedigree of *The Ring and the Book* is democratically short. The story had arisen abruptly from real life—

Secreted from man's life when hearts beat hard,
And brains, high-blooded, ticked two centuries since.

It stirred the excitement of its own brief day, and would now demand the heaviest headlines of our sensational journals. The facts were thrown at once into the professional statements of the criminal courts, but then died away. The story never engaged an artist's attention, nor had it been tested by popular appreciation in the century and a half which elapsed before it fell into Browning's hands. The material therefore had had no artistic breeding.

Browning in fact has written few poems on conventional and long-practiced subjects; he seldom turned to the well-bred story, and when he did so, as in *The Glove* or *Alcestis*, it was for the purpose of presenting his own unique interpretation of it. He preferred to gather materials and subjects in out-of-the-way, unpromising nooks and corners. He was the sole important Victorian poet who did not draw upon the *Morte d'Arthur*; and the well-trodden paths of the rich mythology and history of the Greeks tempted him very little, especially when we consider that he was so intimately acquainted with all that was Greek. And those Greek themes he adopts, such as Pheidippides and Balaustion, have abandoned all adherence to classic tradition in form and spirit. To him, therefore, the fact that his story was a literary upstart would have had no deterring effect. It probably stimulated his interest.

Browning's source-material is also far more definitely limited and ascertainable than is usually the case with the sources of great works of art. The Arthurian legend is too complex and multiform for the critic to feel definitely sure of all his data in such study. Even in Shakespeare, where we have some well-ascertained source-book in novel, or

play, or poem, or history, we are seldom certain whether the poet has not had one or even several other versions of his story before him. He doubtless had his Plutarch in thought while writing *Julius Cæsar*, but we can not tell the countless sources from which he might have drawn certain of the facts and feelings of the story, for *Julius Cæsar* was a popular subject on the stage for many years before Shakespeare used it, and the theatrical tradition must have influenced the dramatist in many ways. But we have here in the Book not merely the definite source of the Poet's information, but we are sure it was practically the sole source of his information. The story was not told in variant versions elsewhere; it was not developed into countless ramifications by generations of writers. Even the variant versions of public history of a date equally remote would afford the artist far more opportunity for artistic choice. But here in the Book we can be sure that we have before us the entire basis of fact for the Poem as Browning has wrought it. His careful search for further fact was in vain. (Cf. RB., I, 423-41, XII, 779-84.) This gives an exactitude, a scientific accuracy to the present source-study seldom attainable elsewhere, and justifies the critic in an even more minute study of original and poem side by side, as significant of the methods of creative power.

With all its definiteness of limitation, however, this source-material offers within its limitation a confusing complexity—we might almost say a chaos. Motives and characters are subject to interpretation and counter interpretation. The very facts of the story are matters of dispute. At no point are the characters of Guido, Pompilia, and Caponsacchi seen to emerge in their fullness, and no consecutive story of the mere incidents is given. The truth of this tragedy is as utterly dismembered as were the limbs of Osiris, and the Isis artist must have ranged through the whole extent of the Book to gather the scattered fragments of truth. Such chaos demanded the most masterly of organizing and interpreting power in Browning, before order could come out of confusion, and the very spectacle of the Poet's constructive mastery, his executive orderliness in art, in building all these fragments back into a consistent whole through which again an organic unity may be felt, is almost unparalleled in source-study.

Browning might have made the problem lying in this confusion easier for himself, if he had assumed an arbitrary power over this new province which had fallen to his imagination. But he also felt that he was peculiarly circumstanced in his creative activity by the "truth" of the materials with which he was working. He frankly recognized the authenticity of these documents—they were no mere fictitious creations, which he might shape or reject or amplify as he pleased. Fidelity to his material became a matter of artistic conscience with him. Mr. Barrett Browning in his letter⁵⁵⁶ confirms the fact of this conscientious

and even painstaking accuracy. The Poet seems to have felt he must be true to the Book in all its details, and that the creative play of his imagination must be ruled by this truth-aspect of the Book. We need not here enter into the general problem as to whether the Poet was acting with highest artistic wisdom in so doing. But we wish to make clear the fact, and the results must either approve or condemn the artist. Consequently we find that Browning, in dealing with the facts of this case, has exercised far less freedom of fancy than did Shakespeare, even when dealing with public and ascertainable history. We well know, moreover, that whatever the poetic truth of the sources of the *Divina Commedia*, the *Aeneid*, and the *Nibelungen Lied*, their actual truth was unascertainable, and the artist was subject to no such rein to his imagination, but was essentially free in his artistry. Possibly this fact appealed to Browning's peculiar type of mind and led him to choose such a subject as *The Ring and the Book* rather than one where there might be less check upon him from the truth of his material. And so, unlike Dante and Milton, Goethe and Shakespeare, he is true not merely to the larger truth of his story, but even to its comparatively trivial details.

Browning's problem and method were not unlike those of the historian. He had a mass of scattered and even conflicting details of fact, with hints of motive and cause. These he must interpret, not to suit a preconceived theory, as did so many of the eighteenth century historians. This older type of history, which preferred the symmetric working out of events in conformity with a preconceived notion, even at the expense of facts, was in Browning's day giving way to a new type of history, wherein the author recognized that he must not distort facts, but must legitimately deduce his principles from his facts—not merely the chosen and convenient facts, but even the stubborn and irreconcilable facts. This change in history was probably occasioned by the growth of the scientific spirit of the century, especially of the strict inductive method of science and of its regard for the integrity of fact. Browning shared this spirit and used the new method of organizing facts which had just been inaugurated among the historians of his day. His artistic method is in part the historic method, but, of course, goes beyond the latter in his consciousness of the moral beauty and of the spiritual meaning of the tragedy, and in his purpose to make the story appeal primarily to the emotions rather than to the mere intellect.

The present source-study, moreover, displays an unusual exercise of the transmuting imagination in its mastery over the crudest and least artistic of materials. The Book is indeed crude, hard fact, which had never been subject to the plastic touch of the artist. The lawyers who wrote it had no other concern than to sophisticate the truth for their own ends. The human element, the spiritual significance, and even the

sensational interest in a barbarous story had not attracted their minds. They apparently destroyed all possibility of art-appeal in the story and were utterly remote from the artist's purpose of pleasing by grace and beauty and power of thought or expression. Poets rarely use such material as it comes roughly from life. The novelist does so repeatedly, and it is the usual practice of a Kipling or a Dickens. But the raw material of the latter is forever dissipated from even the closest research of the critic. We can not follow their processes in transmuting rough life to art. Yet the play of Browning's interpretative and creative imagination upon these crude materials may be studied in full here. Even the crudest of Shakespeare's originals scarcely demanded a more sweeping exercise of creative power and a more subtle, alchemizing touch.

Another unusual phase of this source-material is its minute and reiterated insistence on motive. Browning was always a searcher for hidden and disputable motive. It was this that fascinated him in his early study of Paracelsus. But the famous source-stories of other poets have put stress far more upon action than upon motive. What was done? What was the story that had met the world's eye? In the Book, however, the close and disputed reading of the purpose behind each single incident of the story well fitted this material to Browning's peculiar genius.

Finally, the Book is utterly lacking in an underlying moral truth—a dominant and formative motive. Such a motive is found in the source-books of practically all of Shakespeare's plays, in the Faust legend, in the conception of *Paradise Lost* and of the *Divina Commedia*. The race for ages had been not merely retelling such stories, but had been conforming them to the racial faith, the racial ethics, the racial conception of life and character. There is therefore at hand, all ready for the artist, a larger human truth, which gives majesty to his theme, and which he may adopt or amplify, according to his own vision, as Shakespeare did in the story of Lear. But nothing of the kind was present in the Book. To its collector it had merely illustrated the question as to "whether and when a husband may kill his adulterous wife."² Hence the larger truth of these characters found in the Book and of their relationship to one another, the real meaning of the tragedy, had to be supplied entirely by Browning.

V. The Book, its History:

We may now pass on to a more specific account of "the old yellow book." The Poet himself has with unusual vividness described its finding. By no mere chance, but pushed by "a Hand, always above my shoulder" (RB., I, 40), he had discovered it amidst the rubbish

of a market barrow in San Lorenzo Square. This was in June of 1860. That very day the old record fascinated his imagination. And yet, in spite of his immediate interest, he seems almost to have laid it aside for the next few years. A letter of September 16, 1862, speaks indeed of "my new poem that is about to be; and of which the whole is pretty well in my head—the Roman murder story, you know." Yet his purpose to use the material artistically must have been subject to some fluctuation. And he is even said to have turned over the Book to a friend and novelist, Miss Ogle, with the suggestion that she use it in her art. "But," as the Poet casually remarked to Professor Corson several years later, "when she said she made nothing out of it, I wrote *The Ring and the Book*."

Browning's temporary neglect of the theme was probably due in part to his restlessness and inability to set himself to consecutive work after the breaking up of old habits and of the Casa Guidi home after Mrs. Browning's death. During these years he seems to have devoted more thought to his son than to his poetry. But the Book must have been subjected to many a reading before the Poet made it his "four years intimate," from 1865 to 1868. After the publication of *The Ring and the Book*, the unique old volume was not infrequently shown to the Poet's friends and callers—not "tossed in the air, and caught again and twirled about by the crumpled vellum covers," but handled tenderly, almost reverently.* Late in life he promised it, along with other papers and manuscripts, to Balliol College, Oxford, of which he was an honorary fellow. Mr. Barrett Browning personally carried the volume to Balliol shortly after the poet's death,⁵³⁶ and there it was finally deposited. The Poet's portrait, from the brush of his son (see frontispiece), shows him in his robes as honorary fellow clasping the Book in his hand.

The Book is not at all a published volume, but is rather a lawyer's file of documents and pamphlets⁵³⁵ bearing on the Franceschini murder trial.

Fanciless fact, the documents indeed,
Primary lawyer-pleadings for, against,
The aforesaid Five; real summed-up circumstance
Adduced in proof of these on either side,
Put forth and printed, as the practice was,
At Rome, in the Apostolic Chamber's type.

* Prof. Edward Dowden in a recent letter has said: "I remember an afternoon when Browning put the 'old yellow book' in my hands. He must have felt for it a certain awe as the power that controlled his thought and feeling for so long a time." Dr. Furnivall, on the other hand, writes: "My impression is that when Browning showed me the old yellow book he tossed it up in the air." Mr. John W. Chadwick says: "Mr. Browning did not seem at all inclined to toss it in the air and catch it as he does in verse. He handled it very carefully and with evident affection."

Browning suggests that its collector was the Francesco Cencini,¹²

advocate as well,
Socius and brother-in-the-devil to match,—
A friend of the Franceschini, anyhow.

This seems probable in view of the inclusion of the three personal letters to Cencini (pp. cxxxv-xl); and Ugoliniucci's letter (p. cxxxix) speaks of the fact that he had sent on to Cencini the documents, that his friend might have full knowledge of the case.¹³ The manuscript title-page (p. i) seems still further to prove that the collector had merely a professional interest in the material; it was for him a noteworthy precedent as to "whether and when a husband may kill his adulterous wife without incurring the ordinary penalty" for murder.² The human or ethical side of the tragedy made no appeal to Cencini. The file when completed was part of his law library and not of his personal history. Cencini evidently bound all of this material with a vellum cover to preserve it, and it is this age-yellow vellum which suggested the Poet's name, "the old yellow book." It is small-quarto size, as Browning states,¹⁴ and contains about 250 pages. The Poet's description of the soiled streaks to be seen on many of the pages⁸ is but one of many illustrations of his minute accuracy in describing his Book. This is likewise true of the line descriptive of the old letters: "The sand, that dried the ink, not rubbed away." Furthermore, he translates literally the imprint of the pamphlets as he found it: "At Rome, in the Apostolic Chamber's type." And the absolutely convincing evidence of such accuracy in his vivid description of the finding and first reading of the Book is likewise confirmed by the word of Mr. Barrett Browning.¹⁵

VI. The Book, its Contents:

A description of the contents of the Book as supplementing the Poet's account of it in the first book of his Poem may now be of advantage.

The volume consists largely of eighteen printed pamphlets, and to these are added certain manuscript pages, evidently supplied by the collector of the pamphlets in further elucidation of the case. The manuscript portions include a title-page (p. i), a table of contents (pp. iii and iv); three letters bearing on the case and telling of the final execution of Guido (pp. cxxxv-xl), and a transcript of the court record of the Tuscan trial and condemnation of Pompilia for her flight from her husband's home (pp. v-viii). This last would be directly accessible to the Florentine lawyer Cencini¹² and possibly was copied out with his own hand.

A subdivision of the eighteen printed pamphlets is given on the following page.

TABLE OF THE PAMPHLETS OF THE BOOK.

| | | | | | |
|--------------|---|---|--|---------------|------------------------------|
| 18 pamphlets | Sixteen official pamphlets printed by the Court (the Reverend Apostolic Chamber). | Fourteen pamphlets concerning the murder trial. | Eleven arguments as to the fact and law in the case. | For Guido | By Arcangeli (Nos. 1, 3, 8). |
| | | | Three summaries of evidence, pamphlets 4, 7, 11. | Against Guido | By Spreti (Nos. 2, 9, 16). |
| | | | Lamparelli's argument (pamphlet 17). | | By Gambi (Nos. 5, 12). |
| | | | The final decree of court (pamphlet 18). | | By Bottini (Nos. 6, 13, 14). |
| | Two unofficial pamphlets, without imprint. | | Notizie di fatto, etc. (pamphlet 10). | | |
| | | | Risposta a Notizie, etc. (pamphlet 15). | | |

Sixteen of the pamphlets are official and documentary, bearing the imprint of the Papal Court (*Reverendæ Cameræ Apostolicæ Typis, 1698*).⁶ The other two numbers were privately and anonymously printed.

Fourteen of the sixteen pamphlets are concerned with and are a part of the trial of Guido and his accomplices on charge of murder, January and February, 1698;³⁶⁵ the two remaining official pamphlets, Nos. 17 and 18, have to do with the subsequent petition in court for the clearing from stain of the good name of Pompilia.⁴⁵⁴ These fourteen pamphlets include eleven arguments as to the law and facts in the case and three pamphlets of evidence admitted in the trial.

The eleven arguments present to us, as it was originally presented to the judges, the legal battle of the trial. They make little effort to give a consecutive narrative, but are chiefly devoted to the establishing or refutation of certain points of law. Matters of fact appear but fragmentarily, and are then distorted to a particular professional end; the truth of the tragedy and the real claims of justice are of little interest to the contestants. Every energy of the defense is devoted to the establishing of the plea of *honoris causa*,³⁶⁹ while the prosecution is equally insistent upon the illegitimate delay in taking vengeance,⁴⁰³ and upon the five technical aggravations of mere murder.⁴⁰⁸ The whole is flooded with precedent upon precedent.³⁷⁸ They show much acumen and no heart, and justify Browning's word as "to the patent truth-extracting process." (RB., I, 1114.)

The three pamphlets of evidence, Nos. 4, 7, and 11, however, which included affidavits, letters and other documents bearing on the case, are more interesting. In them we come in immediate contact with the actors and eye-witnesses of the tragedy. Pompilia and Caponsacchi tell

the sworn story of their flight^{18 34} only ten days after their arrest. Fra Celestino, the confessor of Pompilia's dying hours, and his fellow-witnesses testify unanimously and urgently to her purity and Christian resignation.^{352 353} A former servant in the Franceschini household bears detailed witness to the meanness and cruelty of the home life in the old Arezzo Palace.¹¹⁰ Letters of the Bishop¹⁴³ and of the Governor¹³⁸ of Arezzo sustain Guido's accusation against the Comparini. The love-letters which Guido claimed he had found after the arrest at Castelnuovo, and whose authorship he ascribed to the fugitives, are given in large part.^{231 232} All of these matters are of considerable importance in the Poet's judgment of the truth of the case; yet we have undoubtedly lost considerable testimony offered in the murder trial, as several matters of evidence cited or referred to in the arguments are not given in the summaries at hand.³⁵² Of special importance among these are the confessions of Guido and his fellow assassins, which are given only in brief extracts (pp. cxxvii-xxx). These matters may have been left unprinted by the court, or they may have been purposely omitted by Cencini on account of his regard for the Franceschini family. They are usually referred to by citation of folio or page in the court records, which are now lost. Yet even in its incompleteness the testimony of the Book is invaluable to the Poet's art in remaking his story.

The purpose and authorship of the two unofficial, anonymous Italian pamphlets^{55 59} (Nos. 10 and 15) must be judged purely by internal evidence. They were no mere popular narratives of the case, such as a Grub Street pamphleteer would have produced in exploiting a famous contemporary crime. The authors try unsuccessfully to be popular in their style, but their own legal temperaments and attitudes of mind soon prevent the purely narrative and sensational treatment common in pamphlets on famous crimes. The pamphlets were evidently written and printed either by the lawyers in the case, or by some one in their employ. Certain internal evidences, which need not be given here, lead me to believe that they were written by Arcangeli and Bottini themselves. The first of these, *Notizie di fatto e ragione*,⁵⁶ attempted to stir public sentiment in behalf of the accused while excitement over the trial was at its height. The rejoinder charges it with attempting "to insinuate a false impression into the dull heads of the crowd."⁶¹ This rejoinder⁵⁹ was presented before the same bar of public opinion in the same semi-popular, semi-legal manner. It aimed to disclose ruthlessly the greed and craft of Guido. Both pamphlets were probably distributed throughout Rome and became the food for abundant gossip on this already exciting case. These two pamphlets, in fact, seem to have suggested to Browning his *Half Rome*⁶⁵ and the *Other Half Rome*,⁵⁹ though the Poet does not in either of these monologues follow closely the fact or line of thought of the corresponding pamphlet; yet there

are many striking correspondences between them which will appear in the corpus of notes at the close of this volume.

The three manuscript letters⁹ included in the Book were written, "in hands crabbed enough," from Rome on the evening of Guido's execution. They tell of the delay of three days, February 18 to 21, in favor of Guido, which was finally overruled by the Pope.

And these are letters, veritable sheets
That brought posthaste the news to Florence, writ
At Rome the day Count Guido died.

The first of these is from Arcangeli, and is quoted with close verbal accuracy in Bk. XII, 239;⁴⁵⁰ of course, the "*Hac tenus senioribus*," with what follows, is purely Browning's humorous fiction in keeping with the pleasant rascality of the first lawyer. The other two letters were written by Gaspero del Torto and Carlo Ugolinucci, and have but slight correspondence with the second and third letters of the Poem, though some of the material is used elsewhere by the Poet.^{428 429 447-49 451}

Such are the contents of this Book, and they assure the reader that it not only now is, but always has been, a unique volume. Of the manuscript portions, especially the letters, there could have been no duplicate. And very few copies of the pamphlets were probably printed—merely enough for the use of the judges and lawyers and recorders during the trial, and not for public distribution. The history of the Book during "the decades thrice five" from the time it first began gathering dust in Cencini's law library until it fell into the Poet's hands on the market barrow is utterly dark.

From this account of the contents of the Book it is plain that the component parts, while organized partly by the fact that all emanated from the Franceschini murder trial, are from many different minds with diverse attitudes toward the fact in hand. Accordingly, in style, in sentiment, and in mere matters of fact, the various parts of the Book are at odds with one another. The legal arguments, moreover, are fashioned by minds far remote from art purpose or art effect. Their casuistry and sophistry are utterly divorced from such human sentiment as might naturally arise from the case. Pity for the wife, sympathy for the husband, admiration or reprobation of the priest—such natural feelings as we should expect to spring spontaneously from contact with this tragedy—are nowhere to be found in the Book. Wherever there is show of sentiment, its rhetorical parade betrays its insincerity. These lawyers evidently had a job on which to exercise their professional cunning, and they have little conviction as to the rights or wrongs of the case. Such an attitude is as utterly remote from that of the artist as is possible; for to the artist every fact must be steeped in feeling, which must flow from deep wells of emotional life. It is only in the

affidavits of Fra Celestino, of Pompilia, and of Caponsacchi that we find such perennial source of human feeling. For the rest, Browning had to breathe mightily on a valley of dry bones, before these men and women of a former day could stand erect to play over again their parts in that long-forgotten tragedy.

Still further, the style of the Book is in general far removed from such as the artist employs. The testimony is in plain, pedestrian, rather amorphous Italian, rising to effective style only in part in the affidavits of Caponsacchi and Pompilia, while the law Latin partakes of the worst stylistic vices of its technical nature and of its late composition. It is inaccurate grammatically, amorphous rhetorically, and utterly without the lift which a lawyer with good command of language should give to the treatment of a technical subject. Nor are there such brief flights of oratory enkindled with feeling and imagination as might naturally arise in the progress of a case which deals with many of the deepest feelings. All this makes the Book the duller reading to the modern reader and the more forbidding to the artist. Yet Browning was by no means daunted thereby, and rose to some of his own most remarkable flights of stylistic power in retelling the story he found here.

VII. Minor Additional Source-material:

The case, sensational as it was, in its own day, evidently had but the moment's brilliant "usurpature" of the rocket. Soon the story dropped out of the oral and written annals of Rome, so that it left no trace there for the interested search of the Poet (RB., I, 422-56). A friend, however, somewhat later found in London an anonymous manuscript account of the murder (pp. 209-13). This seems to have been written, a few years after the trial, by a man who had no personal knowledge of the case, but who evidently had a leaning toward Pompilia's side of the story, and who had read closely her own affidavit and the second anonymous pamphlet of the Book. It is much more popular in style than the rest of the material described above, and would make a good newspaper story. It was evidently not written with a legal bias. In this pamphlet the Poet found some interesting material not given in the Book. This does not change the bearing of any important facts in the tragedy, but gives numerous descriptive details which were freely used by the Poet. It is probably less reliable as a source of information and evidently misstates two matters of fact from the testimony of the servant Angelica¹¹⁰—namely, the Canon Girolamo's attack upon Signora Violante and Signora Beatrice's denial of hot coals for Violante's warming-pan. Nevertheless the Poet accepts it for the purposes of his art, and weaves its details undiscriminatingly with the rest. It is therefore the secondary source of the Poem. It contributes such

interesting details as the name of the babe, Gaetano,²⁰ the twenty-two dagger wounds of Pompilia,²²⁰ the exposing of the murdered corpses in San Lorenzo,²⁷ the pursuit, arrest, and final execution of the murderers.^{331-42 433-44} Books IV and XII make especially important use of it. The pamphlet was printed privately by the Philobiblion Society in 1870, and has been translated in part by Mrs. Orr in her Handbook. In reprinting it here the editor of this volume has used italics to indicate the portions which present fact not already accessible to Browning in the Book.

Three other fragments of evidence fell in Browning's way. One is a little pen sketch of Guido on a loose sheet of paper, made shortly before his execution; it is reproduced in this volume (p. 275) from the original, now in Balliol College. Another is the water-color drawing of the Franceschini arms, which was sent to the Poet by his friend Kirkup.* It was then pasted on the front inside cover of the yellow book. The Poet reads into this sketch a certain significance; for it is symbolic of the greed and violence of the Franceschini family.⁴⁷ And Browning evidently found and used the description of the torture of the vigil in Farinacci.^{526 386-9} The Poet assures us in the first and last books of the Poem that he made further search for the fact of the case in the records of Rome and Arezzo, but largely in vain.

Only a few years ago, another Italian manuscript narrative of the Franceschini case was found in the Royal Casanatense Library, Rome. Browning never saw it, and hence it is not a part of the source of *The Ring and the Book*, yet the pamphlet gives some interesting additional information and presents the characters of Abate Paolo and Guido and of the Comparini more fully than elsewhere. In several cases it confirms the imaginary amplifications which Browning made of the data before him. The pamphlet is translated in full (pp. 217-225).

VIII. The Legal History of the Franceschini-Comparini Dispute:

It may be well now, for the sake of elucidating the Book still further, to give an account of the complicated series of lawsuits which preceded and conditioned the murder trial, and which are continually discussed in the course of the Book.

The first of the series was a civil suit brought in the spring of 1694 against the Franceschini by Pietro Comparini, for the recovery of the dowry already paid and for the annulling of the dowry contract.²⁶⁰ This was brought on the ground that Pietro had just learned, from the

* Barone Kirkup to Wm. Rossetti, Sept. 18, 1868, "Another book of his (Pietro Aretino) is a dialogue on Cards, in which some excellent stories of gamesters are introduced. I sent some of them later to Browning, who is writing a poem relating to Arezzo, in which gambling will make a great figure."

confession of his wife, that Pompilia was not his own child, as he had always considered her. Guido won this case,²⁶³ but it was appealed²⁶⁴ and remained undecided²⁶⁵ even to the time of the murders, more than three years later. Part of the evidence included in the summaries of the Book was first used in this trial: namely the testimony of the servant Angelica,¹¹⁰ the letter written to Abate Paolo,¹¹² and the letters of the Governor¹³⁸ and the Bishop¹⁴³ of Arezzo.

Next came the *processus fugae*,²⁶⁹ the criminal case brought by the Fisc, or the State, at the instigation of Guido, in which Pompilia and Caponsacchi were defendants from the charge of running away and of adultery. This was introduced immediately after their arrest in May, 1697, though it was not until the following September that the court sentenced Caponsacchi²⁷¹ to three years' banishment to Civita Vecchia, and remanded Pompilia to the convent of the Scalette²⁷⁶ as prison, without giving definite decision concerning her. Much of the evidence in the summaries of the Book had been first used in this trial, and then later had been carried over into the murder trial. Such are the packet of forged letters,²³² the affidavits of Caponsacchi³⁴ and of Pompilia,¹⁸ and of the group of Aretine citizens who swear to the ill-treatment suffered by Pompilia in her husband's home.¹¹¹

Parallel to this suit, but of somewhat later date, was the Aretine criminal prosecution of Pompilia, and of Guillichini²⁹⁵ as her accomplice, on the charges of flight from her husband's home and of adultery.²⁹⁴ This was not decided until December, 1697. We know nothing of it except in the manuscript report given in the Book (pp. v-viii). In it strong insistence was evidently made on a preposterous amount of theft on the part of the fugitives.²⁰⁰ Browning, in the words of the Pope, speaks with strong indignation concerning this travesty of justice, as "that strange shameful judgment, that Satire upon a sentence."

In the fall of 1697, after her imprisonment in the monastery, Pompilia brought suit for divorce from Guido on the grounds of cruel abuse,²⁶⁶ and he in turn seems to have taken counsel as to whether he had sufficient grounds for divorce from Pompilia;²⁹⁷ but, as the replies were doubtful, he did not enter further into the suit. The divorce case was still undecided at the time of the murders.

Then there was the murder trial against Guido and his fellows,²⁶⁵ brought in the Roman criminal courts soon after the murder, and terminating by the sentence given February 18, and the execution February 22, 1698. This is the case presented in the Book. In it the Fiscus,²⁶⁸ or prosecution, as we call it, was represented by Bottini and Gambi as Advocate and Procurator respectively; while the defense was maintained by Spreti and Arcangeli, Advocate and Procurator of the Poor,³⁷⁴ respectively. "Poor" means nothing more than "the accused." The *Procurator* and *Advocatus Pauperum* were quite as much servants

of the State as were their opponents, and were in no sense our modern private counsel hired for and by the criminal and his friends.³⁷⁶

While the murder trial was still going on, suit was brought against Tighetti, Pompilia's trustee and executor, by the monastery of the Convertites.³⁷⁴ By law they could claim the property of any woman of evil life who died within the city of Rome. Tighetti seems to have been harassed at this same time by the Franceschini, who were trying to seize the dead Pompilia's property. So he met these attacks by claiming, through his counsel Lamparelli in pamphlet 17, a court declaration of Pompilia's good fame, which would free him from these lawsuits. This decree was finally given in pamphlet 18, in September, 1698,³⁷⁵ and with this decree the legal history of the Book comes to a close.

IX. The Order of Proceeding in the Murder Trial:

We need also to speak of the order of proceeding in the murder trial, and this the more as the pamphlets in the Book are not arranged quite in their chronological order. To avoid the confusion which might arise therefrom, the probable order, as based upon internal evidence, is suggested.

The trial evidently began in the month of January,³⁷⁶ only a few days after the murders. There seem to have been two distinct stages of the trial.⁵²⁴ In each of these, contrary to the English practice—the practice of the Common Law—the Defense speaks first³⁷⁷ according to the practice of the Civil Law. Arcangeli doubtless opened the debate by pamphlet No. 1, which he prefaces by a connected statement of the facts in the case. He was supported in this by Advocate Spreti in No. 2, and added a word in behalf of the fellow assassins in No. 3. The case for the Prosecution, on the other hand, was evidently opened with the statement of fact made by Gambi in No. 5. This was seconded by the two arguments of Bottini, Nos. 6 and 14. These six arguments are based on the two summaries of evidence, Nos. 4 and 7.

This first stage of the trial seems to have been unsatisfactory to the Prosecution, and the torture of the vigil⁵²⁸ was now demanded that the case might be the plainer. For Guido had confessed only that he had given orders to mutilate and not to kill, and had also qualified his confession in other ways. The Defense strongly resisted the infliction of such cruel torture, but were unsuccessful, and Guido and his associates were tortured anew before the second stage of the trial opened. A more extended account of this debate and of the particular nature of the torture of the vigil is given in Note 526. Evidently a much fuller confession was received from the accused on this reexamination under torture.

The second stage of the contest was far more searching and more skilful on both sides; we have here the really formidable legal meeting. Franceschini's case was again presented by his two lawyers in Nos. 8 and 9. In response to these Gambi prepared brief No. 12 in three hours, as he declared; while the most important word for the Prosecution was now spoken by Bottini in No. 13. This last pamphlet contains reference to the third Summary, No. 11, which must have been made up after February 9. The final word in the trial was the rebuttal made by Spreti, No. 16. A missing argument for the Prosecution, mentioned in Ugoliniucci's letter (p. ccxxxix) seems to be still lacking.

The case then passed to judgment, and the accused were found guilty by the board of judges, and were sentenced on Tuesday, February 18, 1698,⁴³² to death, "by heading or hanging as befitted rank." We learn from letters of a subsequent delay of three days for appeal to the Pope on the ground of Guido's "clericate."⁴² This was overruled by the Pope on the 21st, and the sentence of the court was executed upon the criminals the next day.

X. Browning's Peculiar Interest in his chance-found Material:

Such was the treasure-trove found by the Poet that June day—

This is the bookful; thus far take the truth,
The untempered gold, the fact untampered with.

Nor could the Book have fallen to a more interested reader. With eyes riveted on its pages, he made his way home to Casa Guidi, and there all day long continued to pore over its pages till

The book was shut and done with and laid by

* * * * *

And from the reading, * * *
I turned, to free myself and find the world.

As he stepped for a breathing-while out on the little terrace, the inert materials of the Book were kindled to a new life by his imagination until

then and there

Acted itself over again once more

The tragic piece.

The inert chaos of the Book had become a vital cosmos—those long-forgotten names were once more living persons to him, and their tragedy was athrob with meaning. The tragedy was now potentially recreated. The Poet never lost the exhilaration of his creative mastery of the Book, which he felt the first night of his acquaintance with it.

Nor is it difficult to see that in many ways the Book was such as to appeal strongly to a man of Browning's peculiar temper of mind.

Since early boyhood he had delighted in out-of-the-way, forgotten books, in dusty memorials, in nondescript records of all kinds. His father's shelves were rich in quaint treasures exhumed from bookstall rubbish. *Sibrandus Schafnaburgensis* lets us share the Poet's humorous resentment against the leaden stupidity of one volume of this kind. *Transcendentalism* was probably the outgrowth of another such experience. In fact, Browning's recondite and curious reading was of almost unparalleled extent. From rusty folios he had exhumed his Paracelsus, while still little more than a boy, and had made those old records the basis of the greatest of his earlier poems.

He went to such soiled volumes with a stout heart and a strong brain, well fortified against their crude stupidity. For, deeply bedded in them, he sometimes found golden veins of true humanity; at some point or other, vital thought or passion might greet his search. Such chance gains were doubly precious to the Poet, and had in them the gambler's exhilaration besides; researches of this kind were peculiarly characteristic of his mind and art. In the Book he found material that was unusual enough; yet it was filled with humanity, "red ripe at the core."

We are also informed in Kegan Paul's *Memories* that Browning was acquainted to the minutest detail with recent famous criminal cases.* It is hardly necessary to point out that this was from no thirst for sensationalism, but as a searcher of the human heart he was profoundly stirred by the underlying motive of the criminal. What do these bad hearts mean? What place have they in God's world? How can the all-powerful and all-loving Father permit his children to plunge into such an abyss of evil? Browning was an optimist, not because he shut his eyes to the villain and the brute in human nature, but because he would find even for them a place in his rational explanation of God's world. Mark how he lingers over the suicides in the "little rustic morgue," and note the closing stanza of *Apparent Failure*. Moreover, the salvation of Ned Bratts, grotesque as may be its manner, has a profound place in Browning's thought of God and man. The murderous lust of Ottima and Sebald is finally pierced by a ray of light: "God's in his heaven, all's right with the world." Crime is far too important a fact in life for the poet of man to ignore it; he will "paint man, whatever the issue." Hence this story of Guido's brutal greed, this dark record of crime, proved strongly attractive to Browning, not

* On one occasion, at the table of Mr. Leighton, father of Lord Leighton, the conversation turned on murder, and to the surprise of everybody Mr. Browning showed himself acquainted with the minutest details of every *cause célèbre* of that kind within living memory. He quoted a ghastly stanza on Thurtell's murder of Mr. Weare:

His throat they cut from ear to ear

His brains they battered in,

and was rather piqued that another guest was able to complete the lines with

His name was Mr. William Weare

He lived at Lyons Inn.

for its sensational interest, but for its profound spiritual meaning. In his *Red Cotton Night Cap Country*, he again seized a subject of this kind, but failed to interpenetrate it with his own master power, as he did this sordid tragedy.

It is also possible that Shelley's example in handling the somewhat similar Cenci story may have given an additional interest to the Book. Browning well knew the work of Shelley and the popular celebrity of the story. Though Shelley had been stimulated by the supposed portrait of Beatrice, he had also drawn his facts from a contemporary pamphlet. In fact the famous murder trial of Beatrice is cited as a precedent in the course of one argument of the Book (p. ci). However this suggestion of the value of the material may have operated on Browning, he is utterly independent of the example of his predecessor in his art of using the story of the murder.

Yet all these sources of interest in the Book seem quite secondary to the Poet's recognition of Pompilia and his eager desire to clear her memory. Mrs. Orr has said that Browning was brotherly rather than chivalrous to the women of his acquaintance, and they were many. Yet one can not doubt the fine chivalrous attitude of Browning toward the women of his own creation. He is ready to believe in woman, to defend her, to shield her from misrepresentation, to have faith in her heart. His bad women, such as Ottima and Lucrezia, stand out all the more prominently because they are exceptional and because they are so gross a perversion of woman's true nature. Woman is normally a help and an inspiration, yes, and a quickener of spiritual perception in the more obtuse nature of man. Browning's love poems are full of the thought which culminates in *By the Fireside*. Women like Pompilia, who were the victims of hard conventionalism or of the brutality of man, always had his heart's sympathy, as we can well see in *The Flight of the Duchess*, *A Blot in the 'Scutcheon*, and *My Last Duchess*. How true his chivalry rings in *Count Gismond* and *The Glove!* In the last, Browning was dealing with a story centuries old, and its various versions closed with the glove flung straight in the lady's face, and a moralizing tag appended:

Not love, quoth he, but vanity,
Set love a task like that.

Browning's own glove of challenge was as prompt in reply as Count Gismond's, and in the sequel which he has indignantly created he gives De Lorge his due, while the lady is borne off by the page to live a life of true love. But we have said enough of this chivalry of Browning as a creator of women. In reading the Book, he found a girl, a child-mother, wronged. The lawyers on both sides had used with little reverence the "lily-thing to frighten at a bruise." They spoke of her as a "wretched child" and "unfortunate girl," but they were solely intent

on their technical pleadings, and not the slightest drop of human pity warmed their hearts. But behind this grim record of cruelty and greed, on suggestion of the affidavit of Fra Celestino,³⁵³ Browning perceived her woman's soul; she had been misjudged, she lay all undefended—a Browning to the rescue! Not that he would misrepresent the truth for her sake, but to his perception her case was all-sufficient in its bare truth. His prepossession, like that of *Other Half Rome*, would right her, and it doubtless had fully as strong conviction of its rightness. It had also the advantage of being by one of the most searching and most truthful of human hearts. Yet he did take sides, and his faith in woman made him take the woman's side, whether he would or no. This chivalry, I feel, more than anything else, occasioned Browning's prolonged creative activity upon the story and governed his whole attitude toward his material; and this, in all probability, sprang in almost instant impulse when he first "fused his live soul" with the Book, and when for the first time the tragic piece acted itself over again before his mind's eye. Browning was as truly and as promptly Pompilia's lover as was Caponsacchi.

Nor do we sympathize with the paradox of Mr. Chesterton that Browning said: "I will show you the story of man and heaven by telling you a story of a dirty book of criminal trials, from which I select one of the meanest and most completely forgotten." Something more than meanness and pettiness drew his attention; it was a story of a suffering woman, cruelly tormented by her husband, who was backed by all conventional society. In fact the case seemed all but hopeless for Pompilia, for by the custom and morals of the society in which she lived there was naught for Pompilia to do but submit, and her slightest resistance would have seemed censurable by those standards. And yet God's hand had brushed aside all cunning contrivances of man and had rescued her by the agency of the hero-saint Caponsacchi. It was both a tragedy and a triumph, capable of moving pity and terror and exaltation. It was neither petty nor trivial, even though its actors were not kings and though its stake was only a woman's body and soul.

XI. The Choice of an Art Form:

When Browning had determined to give full expression to himself through the material of the Book, he must have faced very early the question of artistic form. Should he make of it drama or epic or romance or novel? Shelley had used the drama for the Cenci story, and there were marked dramatic possibilities in the catastrophe of the Franceschini; but the drama had been abandoned twenty years previously by Browning, after he had fairly tested his power of expressing himself through its means. That he also recognized the novelistic possi-

bilities of the material is evidenced by his giving it to Miss Ogle. Behind Pompilia he saw the panorama of the environing conventional society, with its trafficking for dowry, its cynical unfaith in purity, and the dominating presence of a worldly church and a selfish churchmanship. The tragedy lay too deeply rooted in that society to be divorced therefrom, and Browning knew that particular world, with all its types and ideals, as few men have known it. He must have seen an historical novel in the making, and it was truly there. His own results indeed have something of the novelist's arts in them—in fact the poem is novel, as much as it is epic or drama. Yet Robert Browning was not a novelist but a poet, and instead of experimenting in a new art, he did what he had so often done, modified his "art familiar" to adapt it to his new theme, and the form he adopted drew much suggestion from the well-elaborated technique of the novel.

Browning was within certain limitations a very prolific creator of poetic forms. He scarcely ever departs from the drama or the dramatic monologue, but he has modified them with much variety. He was never conventionalized nor stereotyped in his art, either by the tradition of other artists or by his own achievements, and his successes did not repeat themselves. *Paracelsus* was warmly praised by his small circle of admirers, and he himself prized *Pippa Passes* highly, but neither of them is repeated. We wish in vain for a repetition of the mad-cap balladry of *The Pied Piper*, or the swift-thrilling power of *The Flight of the Duchess*. His own words in *James Lee's Wife* are apropos:

Nothing can be as it has been before ;
 Better, so call it, only not the same.
To draw one beauty into our hearts' core
 And keep it changeless ! such our claim ;
So answered,—nevermore!

* * * * *

* * * Rejoice that man is hurled
 From change to change unceasingly,
His soul's wings never furled !

In *The Ring and the Book*, indeed, he merely modifies his familiar art of monologue writing to suit his material. The single monologue would be far too narrow. No one point of view could include all the facts in the case, much less deploy the whole range of motive surrounding the tragedy. There must be room not merely for the main personages, but for the environing society with its motives and ideals. There must also be opportunity for the revelation of the souls of the actors, for in his dedication of *Sordello* (1863), written when *The Ring and the Book* was being planned, he says: "My stress lay on the incidents in the development of the soul; little else is worth study. I, at least, always thought so." Browning's method of using the well-tried mono-

logue to retell the Book is simple but effective. He marshals the tragedy through ten successive monologues and adds the necessary prologue and epilogue. In the monologues of the actors themselves he could present the passionate heart of the tragedy; in the rest he could give its environment and interpretation. Nor could Browning, with his own unflagging interest in the play of human motive, have anticipated the oft-repeated criticism of excessive repetition. Effective as the device is, however, Browning never again uses the monologue in this way.

XII. *The Ten Monologue Plan suggested by the Book:*

We may add still further that the suggestion of this art form lay plainly in the Book itself. There we read the professionally biased arguments of the lawyers, the more violently prejudiced, popular Italian narratives (suggestions of *Half Rome*⁵⁵ and *Other Half Rome*⁵⁶), and the affidavits of Caponsacchi, Pompilia, Fra Celestino, and the housemaid of the Franceschini. All these phases of truth lie side by side in the Book, illustrating the many ways in which the fact of the story may be told. Browning saw therein that truth is many-sided, and that certain phases of the truth would meet the eye of *Half Rome* which would be unseen by Caponsacchi. If then he desired to tell the whole truth of the tragedy, the variety of these accounts in the Book itself must have forced upon his attention the real power of this method in presenting many-sided truth. If he should tell the story from one standpoint only, he would fail of truth, no matter how conscientious he might be. For to use the words of Merlin in his riddling triplets: "The truth is this to me and that to thee." Let the reader think deeply upon his two figures of speech in Bk. I, 1343-78, before adjudging the plan of this monumental poem. And, may I add, we should utterly abandon the search for conventional epic form in a poem which is epic only in length.

When Browning had adopted the multiple-monologue form, why should he use ten monologues, neither more nor less? Was he padding out to reach the conventional twelve-book epic, as Tennyson divided one of his *Idylls of the King* for that purpose? Are the lawyer's monologues, as is often charged, unnecessary? If mere pleasant reading is the end, possibly so; but they are as essential to the architecture of the poem as are the other eight monologues. More than thirty persons are named in the Book. Browning assigns monologues to only six of these, but quotes from several others, such as Abate Paolo, Fra Celestino, and Violante, in such a way as to throw light on their characters. We might well listen to the complete version of the story from any one of these. Browning has also added the purely hypothetical and typical personages of the first three monologues. We feel, however, that the ten mono-

logues need no eleventh, nor could they be cut to nine. Browning himself has pointed out his three groups of three each, the actors, the law, and Rome's gossip. If this tragedy is to be understood with its environment, all of these are necessary.

Browning chose as speakers three actors of the story, and three only, because he saw that the heart of the strife lay between Guido, Pompilia, and Caponsacchi—his ideal villain, his ideal saint, and his ideal hero. Their moral and spiritual relationships with one another were the real tragedy and triumph, both in the fact of life and in the ideals of art. The families of the Franceschini and Comparini, and all other persons in the story, were merely accessories thereto. It was inevitable, from his very material, that Browning should make the monologues of Guido, Caponsacchi, and Pompilia the center of power and interest alike in his poem. The triangular plot, moreover, is common enough in Browning, as in all literature. It is exemplified in *Colombe's Birthday*, *The Return of the Druses*, *In a Balcony*, *A Blot in the 'Scutcheon*, *King Victor and King Charles*, *A Forgiveness*, and the *Inn Album*. The monologues of Violante, of Abate Paolo, of the Bishop, of Fra Celestino might have been made very interesting in themselves by such a searcher of soul as Browning, but they would have diverted attention from the essential interest of the plot, namely the relationship of the husband, the wife, and the St. George of the story.

Then, as to the reason for three official monologues, we must remember that the Book is the statement of a law case and is not a tragedy. Much of the fact as regards the main actors came to Browning filtered through the prejudiced arguments of the lawyers—so shrewdly sophistical, but so untrue. Browning was in no mood for such jugglery with the truth, and the vials of his ironical wrath are poured abundantly on the “truth-extracting process?” The presence of such a conventional institution of law, so far removed from real justice and truth, was one of the profoundly significant aspects of this tragedy in real life. Pompilia’s position was all the more helpless and her rescue the more desperate because of it. The historic atmosphere was conditioned by its method of argument. Hence Browning chose a sample speech from each side of the murder trial. He reproduced in Bottini and Arcangeli, with all possible fidelity, the impression these lawyers in the Book had made upon himself. The ineptness, the heartlessness of the law, had indeed made the tragedy all the darker. Unwilling, however, to leave the matter thus as an occasion for bitterness over the failure of human justice, Browning confronted the lawyers with a third official verdict—one suggested by a mere hint in the Book—one that had not merely come from a seat of authority, but from the heart of a great, good, wise man. Therein the Poet gave his own most deliberate verdict in the case. Truth’s debasement as well as its exaltation in the human insti-

tution of law were absolutely essential to the truth of the story as the Poet had found it; for had not the right triumphed, and had not Guido, probably to the surprise of his contemporaries, finally been brought to justice? This, as Browning felt, could have been achieved only by the divine interposition of God's representative in the Pope.

Official judgment of the case of Guido, Pompilia, and Caponsacchi lay plain upon the face of the Book. But Browning's knowledge of human nature gave him no less confident assurance of the abundant gossip that swept over Rome and swirled around the actors, in this as in all the tragedies of life.

The world's outcry
Around the rush and ripple of any fact
Fallen stonewise, plumb on the smooth face of things.

This was also suggested by the two popular pamphlets^{55 59} with their leveling of the case to the gossip-loving Rome—that outward world which had been potent in forwarding the tragedy. For that gossipry had watched with gusto the mud-flinging of the Franceschini and Comparini; they had been a heartless barrier-wall around the struggles of Pompilia to escape; they had enjoyed the rankling gibe against the Franceschini, and had sneered cynically at the Christian heroism of Caponsacchi and the saintly purity of Pompilia. In fact, to them the catastrophe itself was little more than a delicious piece of sensationalism. Not that this environing world was malicious or depraved—it was merely human in its weaknesses. Browning had often presented a past social condition through typical personages. Ruskin in speaking of *The Bishop Orders his Tomb* says: "I know no other piece of modern English, prose or poetry, in which so much is told of the Renaissance spirit—its worldliness, inconsistency, pride, hypocrisy, ignorance of itself, love of art and of good Latin." The Poet presented many such typical personages in *Bells and Pomegranates*—*The Soliloquy in a Spanish Cloister*, *A Toccata of Galuppi's*, *Johannes Agricola*, *The Grammarian's Funeral*, and many others. When Browning, therefore, saw the need of presenting the Rome and Arezzo of the late seventeenth century as an environment of his tragedy, a necessity for any true presentation of the story, he chose three typical personages and named them in such a way as to emphasize their purely typical significance. They interpret the spirit of their day and prepare the reader for an intelligent understanding of the words of the main actors who follow.

It may be well here to point out the fact that in his purpose not merely to tell a story but to explore all its ramifying motives and effects, to reproduce the intricate cross-play of many minds in a story, the Poet has conceived these first three monologues with much skill. And it is quite impossible to divide off the important later monologues for sep-

arate reading, as a really effective whole. In the economy of his Poem as a whole, the narrative of fact is presented fully in *Half Rome*, *The Other Half Rome*, and *Tertium Quid*. Still more, in these monologues the author inserts certain passages, which are distinctly preparatory for the later and fuller study of the three main characters. Bk. III, 839-867, is a preparation for the understanding of Caponsacchi at the opening of his story, while 1340-1375 offers characteristic sample speeches of both Pompilia and Caponsacchi. Bk. IV, 581-627, in like manner gives us a preliminary word from Guido. The Poet thus prepares one who reads the poem in regular order, not merely to listen to the story from the chief actors, but to understand their hearts by the interpretation they offer for facts already known. Not the fact but the meaning of fact in character is thus emphasized in the three main monologues. The Poet is also able, through this device, when he comes to the most important portion of his Poem, to skip from one significant fact to another, without dwelling on the necessary narrative details which would otherwise demand room, but would hinder the mere character study. These three earliest monologues are of great importance, indeed, in giving the whole environment which surrounded and almost controlled the life of the main actors.

This choice of the multiple monologue form was also well adapted to preserve the Book in all the fullness of its internal discrepancies of fact and motive. The Poet found each act, each event, subject to interpretation and counter interpretation. Guido's lawyers branded as a lie Pompilia's evidently mistaken statement that in her flight she had reached Castelnuovo at dawn and had been there only an hour when overtaken.²¹² The Prosecution, on the other hand, while acknowledging the falsity of the statement, finds casuistical excuse for it. Browning felt that both were wrong, and that the real Pompilia had told no conscious falsehood. Here, then, were three different interpretations of the one fact, all necessary for the presentation of the full truth. How could the artist do this in any straightforward narrative form? He would have to choose but one interpretation, and his very choice, the Poet felt, would be an untruth. He accordingly devised this multiple monologue form for this very end. In the repeated monologues, he could easily find room for even the most antithetic interpretations of fact and motive. And he thus threw the final choice of alternatives upon the reader, who became, as it were, the spectator in a living and moving tragedy where all the rights and wrongs of the case were still left undecided, and where truth was still changing and variable because alive.

It is thus evident that the Poet's choice of form was conditioned and governed by both his raw material and his purpose; and he has therein achieved a masterly success in form and organic wholeness,

which is one of the most difficult feats for the writer of a long poem. Yet he has been a law unto himself in this matter—looking not to established successes of the past, but working out his own problem with rare originality and power. He abandoned the prestige of the epic, of the tragedy, and of the novel, and established a new genre which must be judged by its effect and power, and not by any long-established rules of art.

XIII. Browning's Fidelity to the Fact of his Source-material:

We turn now to the all-important question of how the Poet deals with the fact of his Book in creating his masterpiece. No one can read the Poem and its source side by side without meeting many illustrations of the minute and accurate use of his original. Scores of trivial details have been governed, perhaps unconsciously to the Poet, by the Book. Browning must have been saturated with the Book * before he began writing the Poem, so that the facts marshaled themselves swiftly and without effort into their places in his story. The body of notes at the end of this volume offers hundreds of examples of such use of fact. The names and characters, the dates, the events, the situations, and motives, the very turns of expression in the Poem, are continually drawn from the matters of fact in the Book. Browning's debt in these respects can scarcely be overstated. On the other hand the passion of the story, as Browning has conceived it, the spiritual meaning of the tragedy—all the real poetry—are created by the Poet. They are created, however, in strict accordance with the detail fact in the Book. In few cases, indeed, does the Poet violate the ascertained fact of his sources, even in his freest range of creation.

In the matter of the chronology of the tragedy he is almost painfully accurate to the Book. The story therein is definitely dated in most of its detail, though these time-references are much scattered. It is evident the Poet has mastered all these dates carefully. He is studiously accurate whenever he mentions in his narrative the time of day,^{187 188 211 320 847} the days of the week,^{184 301 432} the seasons of the year,^{85 155 319 431} intervals of time,^{43 98 194 285 290 300 303 350 373 436} or ages of persons.^{44 64 86} The two opening lines of Pompilia's monologue, which give her age, are accurate to the day.¹⁵ Her words, "there wants of it two weeks this day," afford a characteristic example of how he remains true to fact even when athrob with the deeper spiritual passion of the poem; for this touch is expressive of the deep yearning of Pompilia for her absent babe.²³ Caponsacchi's statement, "there's new moon this

* Orr's Life, p. 409: "He had read the record of the case, as he has been heard to say, fully eight times over before converting it into the substance of his poem."

eve,"¹⁸⁵ and "Easter's past,"¹⁷⁵ had evidently been verified by the Poet. His "Jubilee gave the hint"¹⁰² is from the Book. In one case he has intentionally changed a date—that of the flight of Pompilia and Caponsacchi from Arezzo, but this was for a definite artistic purpose.¹⁸⁴ These minute accuracies had become a habit of Browning's mind in dealing with the story, and characterized his art in his poetry generally.

The names of places, of streets, of buildings, and of institutions connected with the story are found by the Poet in his material, and are not ordinarily supplied by his own imagination. The line of march to Guido's execution is literally translated.⁴⁴⁰ Not a single important locality has been added by the Poet, though he has often elaborated the mere name as he found it, with abundant descriptive detail. For this purpose Browning had evidently visited all of the localities of the story, to gather local color, and he describes such places with his eye on the object.* This is to be seen in his account of the inn at Castelnuovo,²¹⁰ San Lorenzo Church,⁵²⁹ the Pieve,²⁷ and the Piazza del Popolo.⁴⁴² Other localities of but minor importance are likewise drawn from the Book, such as the villa of Vittiano,⁸¹¹ the New Prisons,²⁵⁵ the Convent of the Scalette,^{276 278} the home in Via Vittoria,⁶⁶ the barber shop in Piazza Colonna,⁷⁸ and the Torrione.¹⁸⁸

Furthermore, the names of the persons as given in the poem are found in his original to the number of thirty-three. The only names (except historic names which are sparingly and unimportantly used) that are added by the Poet are those of Luca Cini (II, 118), of Canon Crispi (VI, 1114), and of Curate Carlo (II, 159), all of them utterly unimportant. Even such trivial personages as the priest Romano,¹⁴⁴ Curate Ottoboni,²⁵ Monna Baldi,⁵⁸ Count Tommaso,⁴⁸ and we might add the nameless hairdresser⁷⁸ in Piazza Colonna, are drawn from the Book. The eight-year-old curly-pate who is so interesting to Arcangeli is of course fictitious, but he is named for his father Hyacinthus, or in Italian, Giacinto.³⁷⁵ All of the thirty-three persons named fill practically the same place in the story of Book and Poem alike. One may compare with this the practice of Shakespeare, who rejects or adopts the names found in his sources with utter freedom.

Moreover, the turns of expression and the choice of words in the Poem are not unfrequently governed by those of the Book. Such words as relegation, summary,⁵ quality,⁴⁰⁸ circumstance, instrument,⁴⁵⁶ index,¹³ calash,¹⁹² used in unusual senses are mere anglicizing of definite

* "A favor, if you have time for it. Go into the Church of San Lorenzo in Lucina in the Corso and look attentively at it, so as to describe it to me, on your return: The general arrangement of the building if with a nave—pillars or not—the number of altars, and any particularity there may be—over the High Altar is a famous crucifixion by Guido. It will be of great use to me. I don't care about the outside." Postscript of Browning's letter to Leighton, October 17, 1864 (Orr, p. 413).

originals, as may be seen by the note references. The reference to Guido as Sir Jealousy²³⁹ is drawn directly from Il Geloso, the Commissary²²⁶ from Il Commissario, the Convertites²⁷⁷ from Convertitæ, Vicegerente²⁰⁸ from Vicegerente, and the Public Force from la Forza.²²⁵ The expression "at the seventh hour,"¹⁸⁷ for one a. m., is drawn from *alle sett' hore*; "Tis one in the evening"³²⁰ from *Un' hora circa di notte*; and "my life not an hour's purchase"²⁵⁰ from *La mia vita era a hore*. In each of the three the Poet borrows the Italian idiom just as he found it. Still further the Poem affords several illustrations of his use of the speech of one of his characters practically as it had come to him. In such instances, however, he charges the commonplace phrases of the original with a new meaning and fits them into his own sinewy style—an interesting proof of his power as a stylist. Such is the explanation of the

Oh Christ, what hinders that I kill her quick?¹⁵²
of the

Tell him he owns the palace, not the street.¹⁸⁰
and of the

I have saved your wife from death.²²⁰

(Cf. notes 153, 330). Books VIII and XII of the Poem make extensive use of the source-material in this way. Here the Poet even governs his choice of words in his translation by those of his original, frequently using etymological derivatives at the expense of normal English.²³⁹ A good example of this is seen in the story of Samson repeated by Browning, VIII, 644-651.

Blinded he was, * * * * *
Intrepidly he took imprisonment,
 Gyves, stripes, and daily labour at the mill :
 But when he found himself, i' the *public* place,
Destined to make the common *people* sport,
Disdain burned up with such an *impetus*
 I' the breast of him that, all the man one fire,
Moriatur, roared he, * * *

The italicized words are taken directly from the Italian *intrepido*, *destinato*, *impeto*, etc., of the account of the first Anonymous Author, B. 124:

He suffered with an intrepid mind the loss of his eyes and other grievous disasters, but when he saw that he was destined to serve as a pastime in public places, and when he there heard the jeers and derision of the people, the anger in his breast was so inflamed, that, all madness and fury, he cried out : "Let me die," etc.

In fact almost everything from lines 587-681 is thus closely paraphrased.⁴⁷⁶⁻⁸³ Instances of such close paraphrase are found scattered

here and there throughout the Book. Such is the Poet's paraphrase of the title page of the Book,² of the letter to Abate Paolo,¹¹² of the scraps of love-letters,^{159 161 237-41} of Caponsacchi's retort during cross-examination,^{244 246} of his decree of banishment to Civita Vecchia,²⁷¹ of Abate Paolo's final distress,³⁰⁵ of the words of Confessor Celestino,³⁵⁴⁻⁹ and of the final decree of court.⁴⁵⁶ The question will doubtless be raised here again whether such cutting of rough material into iambic pentameter is art, but we defer discussion.

This may naturally lead to the abundant law Latin, which has been the despair of many a reader of Book VIII, and which is found occasionally elsewhere. The Latin is not invented by the author, but is taken almost entirely from the Book, and its presentation in Book VIII is perhaps part of the truth of the impression of the Book upon Browning's Latin taste. In it he holds up the ignorant stylistic arrogance of the Book to ridicule. This monologue quotes the crude book Latin fifty-six times⁴⁶¹⁻⁵¹³ in quotations of widely varying lengths, drawn from all parts of the Book. The exactitude of the reproduction of these shows that they were not merely stray scraps that had clung to the memory, but were carefully copied by the Poet. In one case he made the mistake of reading *via* for *ira*,⁵⁰⁸ but elsewhere his modifications are slight, only such as are needed to fit the passage to the meter or context of the Poem—such as the substitution of antecedent for pronoun, changes in number or tense of words found, infrequent substitution of a synonym of different number of syllables, or slight omissions for the sake of brevity. One of these passages, the magniloquent peroration of Arcangeli's final argument,⁵¹³ is produced through a hundred lines as the peroration written by the Arcangeli of Browning's creation. This Latin the Poet translates or paraphrases with considerable freedom, allowing his sense of humor to add many a sly quirk, or his sense of irony to thrust home effectively. In fact the student of the monologue may gain certain side-lights on the character of the lawyer by the flavor of these paraphrases. In such work, of course, it is the subtle intellect of Browning rather than his creative passion which is speaking, and this phase of his art is undoubtedly on a lower artistic level; and yet to Browning it was essential to his conception of the Poem as a whole, as it was a reproduction of the effect of the real Arcangeli upon himself.

In the legal lore and technical legal phraseology so abundantly displayed throughout the Poem, and especially in Books VIII and IX, the Poet evidently depended very largely upon what he found in the Book. This display of out-of-the-way technical lore has perhaps caused some readers to stand in awe of the learned acquirements of Browning in the ecclesiastical law. But the study of the Book makes it evident that he learned almost all of his law from the Book and

learned some of it amiss. The various points of law ^{223 298 362 400-24} made in the Poem are taken from the Book, and also the terms *usufruct*⁶⁸ and *domus pro carcere*,²⁵⁸ the reiterated plea of *causa honoris*,³⁹⁹ the discussion of the bearing of a murder *ex intervallo* and *incontinenti*⁴⁰⁴ and the various ramifications of these two.^{406 407} Likewise every point in the discussion of the technical aggravations ⁴⁰⁸⁻¹²⁰ of the crime was found in the Book. All legal precedents and authorities cited ^{379-85 304-8} were drawn by the Poet from the same treasury. It may be well to cite one of these transarrings of a point of law and a case from the Book to the Poem.⁴¹² In RB., VIII, 1146-52, we read

Suppose a man
Having in view commission of a theft,
Climbs the town-wall: 'tis for the theft he hangs,
* * * * *
Law remits whipping, due to who climb wall
Through bravery or wantonness alone,
Just to dislodge a daw's nest, plant a flag.

This is, of course, but a vital, semi-humorous paraphrase of Arcangeli's words (B. 101):

"Thus if one wishing to commit theft, climb over the walls of the city, though he could commit that deed without the crime of crossing the wall, (which is a very grave crime), even then only a single penalty, namely that for theft, is inflicted, as the crime chiefly in mind."

Such examples are multiplied abundantly in the notes.

I find but one proof of the Poet's having traveled beyond the Book for legal information and this is in his finding in Farinacci the description of the torture of the vigil,⁵²⁶ which is mentioned but not described in the Book.

We have here an interesting example of how easily and thoroughly a master artist may gain sufficient technical lore, even in a difficult field, to astonish his critics. And this may perhaps offer a striking truth to those who guess at Shakespeare's occupations by his chance references to technical subjects, no matter how accurate they may be.

XIV. *The Comparini-Franceschini Story as Found in the Book:*

Practically the whole story of the Franceschini and Comparini, in all its detail, is likewise taken from the Book, where the Poet found it, not as a connected narrative, but usually in fragmentary fact. The three Italian pamphlets, especially the one not found in the Book, are more largely narrative. But the Poet does not follow any of these exclusively in creating his own story. It may be well to bring home this truth by giving here the connected story of Pompilia, with citation for each incident to the proper topical note.

Guido Franceschini, of a poor but noble family of Arezzo, had been dwelling in Rome for many years⁴³ as a dependent upon one of the cardinals.³⁹ When finally dropped from this service,⁴¹ he determined to provide for himself by making a marriage which would bring him a good dowry.⁷⁸ On the hint of a certain hairdresser,⁷⁶ and with the aid and counsel of his brother, Abate Paolo,⁵⁰ who was much more successfully established in the Church than himself, Guido made advances⁷⁹ for the hand and the dowry of a certain Francesca Pompilia, the thirteen-year-old daughter of Pietro and Violante Comparini.

The Comparini were of the well-to-do middle class⁶³ in Rome, with property of 10,000 to 12,000 scudi,⁶⁷ besides a certain inheritance left to them in entail, the income or usufruct⁶⁸ of which was their own in part,⁷⁰ and would be theirs absolutely in case they had a child. But they had been married many years and had reached middle life,⁶⁴ and still no child had been born. Certain financial reverses⁷² brought home to them bitterly the limit upon the usufruct, and they were so reduced that Pietro had to ask the Papal alms.⁷³ Under this difficulty Violante formed a plan to relieve their distresses. She made pretense of pregnancy¹⁰³ and then, by the connivance of the midwife, presented to her husband the girl babe of a common strumpet.¹⁰⁵ Her trick evidently succeeded, as Pietro believed the child was his own and enjoyed the considerable financial advantage arising therefrom. It was this child, now grown to the age of thirteen, who attracted the attention of the Franceschini brothers. For as she was sole heir of the property, and as the parents were well advanced in life, it must have seemed to them quite an eligible match.

When they had made advances to the Comparini, Violante's head⁷⁹ seems to have been turned immediately by the thought of her daughter marrying a nobleman.⁸⁰ She evidently added her insistence to that of the Franceschini, and they induced Pietro to sign a marriage contract, granting a dowry of 2,600 scudi.⁹¹ But when Pietro found out by inquiry that he had been deceived as to the rank and resources of his proposed son-in-law,⁸³ he refused to go on with the marriage ceremony.⁸⁴ At this juncture Violante, who was evidently determined to have her own way, with the assistance of Abate Paolo secretly⁸⁵ arranged the marriage. When Pietro heard of it he was very angry,⁸⁷ but was forced to acquiesce.⁸⁸ He went even further and agreed to turn over all his property to the management of the Franceschini brothers⁹⁰ on the condition that he and his wife should go to live with their son-in-law at Arezzo.⁹³ The whole household was accordingly transferred to Arezzo, probably in December, 1693.⁹⁴

Domestic peace was quickly broken in the Arezzo palace. Violante and Donna Beatrice Franceschini seem to have been at sword's

points.⁹⁶ The Comparini were likewise disillusioned by the pinching and penurious poverty which they were forced to share. Open quarrels soon broke out, and complaint was made to the Bishop of Arezzo.¹³⁹ There seems, in fact, to have been a bitter and scandalous turmoil during the four winter months. At last the Comparini decided to return to Rome,^{99 100} though the child-wife must of course remain behind with her husband.

No sooner had they reached Rome¹⁰¹ than they formed a scheme to recover not merely their own property, but the dowry of Francesca Pompilia. Violante, taking advantage of Jubilee¹⁰² and pricked by a conscience¹⁰¹ of a very elastic nature, confessed her fraud as regards the child's birth.¹⁰³ This was easily established by six witnesses.²⁶¹ Pietro accordingly brought suit for the cancellation of the dowry contract²⁶⁰ on the grounds that Pompilia was not his child, as he had supposed when he made the contract. To the infamy of such a trial the Comparini added still further by publishing and distributing broadcast certain libels about the Franceschini.¹⁰⁹ Even though the latter did win the suit,²⁶³ they were stamped with the indelible disgrace of Pompilia's birth. At this juncture, Guido, by way of retort against the Comparini, had Pompilia write the letter to Abate Paolo, which loads her parents with such an impossible burden of crime.¹¹²

Accordingly the wretched child-wife was left to the heartless fury of the husband of three times her own years, and of Donna Beatrice. Little, however, comes to light concerning her suffering during these years—only what is told in her affidavit.¹⁸

At the end of three years Guido seems to have begun more active plotting to rid himself of this wife whose infamy burned him to the very bone. But he would drive her into overt sin, if possible, that he might not forfeit his claims to her dowry.^{121 122} It is quite impossible to explain the facts of the Book, especially the love-letters,²³² except by such a scheme on the part of Guido; nor is the scheme so unnatural nor was it as demonic, judged by the morals and manners of Guido's class and time, as it seems in the opinion of the Poet. His plan seems to have been so to press cruelty and fear of death upon her that she would run away. And the sham correspondence carried on by Maria Margherita Contenti^{54 154} seems to indicate that Guido had even singled out Caponsacchi as of a disposition to be allured by such a perilous liaison. At any rate, he soon seems to have made show of a bitter jealousy of Caponsacchi.¹²⁸ The plot is easily explainable if we but think of the bitter slanders of the Comparini, of the manifest infamy of Pompilia's birth, and of the sordid, selfish nature of the Franceschini.

In these straits the wretched girl must have been in all but helpless terror, especially after such a scene as that following the evening at the

comedy, when Guido pointed a pistol at her and threatened her life.¹⁸² She had long before tried, and in vain, to find help in the Bishop¹⁸³ and in the Governor of Arezzo.¹⁸⁴ We can see how naturally they would have sided with the Franceschini in these circumstances.

Pompilia accordingly appealed to her confessor Romano,¹⁴⁴ entreating him to write to her parents for help; but no reply came to the letters (which were probably not written). Then she evidently turned to Canon Conti¹⁴⁵ and to Signor Guillichini,¹⁴⁶ both of them relatives of the Franceschini. Conti, who knew of Caponsacchi's proposed trip to Rome¹⁵⁸ and who knew his friend's character,¹⁵⁵ suggested that Pompilia seek his assistance. She did so, and though Caponsacchi first refused to have anything to do with such a perilous undertaking¹⁶⁰ he was at last induced to accompany her.¹⁷⁹ We have no definite testimony in the Book as to his former character,¹⁵² but there seem to be no grounds for rejecting his claim that he accompanied Pompilia out of Christian pity¹⁷⁹ and without the slightest intervention of criminal intent.

Circumstantial evidence, gathered from the details of the Book here and there, also indicates that Guido was aware of this plan and was gladly waiting its outcome.^{121 150} He plainly had nothing to fear from further disgrace, and he would thus rid himself of a loathed wife whom he had already found he could not divorce. We can hardly explain the intervention and later testimony of Maria Contenti in any other way.^{54 154}

Accordingly Canon Caponsacchi and Pompilia concerted their plan on the last Sunday evening of April in a conversation at the window of the Palace.¹⁸⁴ The wife left her husband's bed late at night,^{186 187} gathered together a few clothes, some trinkets and money,^{189 200} and made her escape at dawn,¹⁸⁸ April 29, 1697.¹⁸⁴ When she had reached the tavern outside the Porta San Clemente,¹⁹¹ she found Canon Caponsacchi awaiting her with a two-horse carriage.¹⁹² Guido claimed that they had the further assistance of Signor Guillichini,¹⁴⁶ who would have gone with Pompilia to Rome if it had not been for sickness. They entered the carriage and set off rapidly for Rome, traveling uninterrupted,²⁰⁸ according to their own statement,¹⁹⁴ until they reached Castelnuovo the following evening.^{211 212}

Guido having awakened late the next morning because of the effects of an opiate¹⁹⁷ administered by his wife, as he claimed, set out in pursuit, probably expecting to find his wife surrounded by such evidences of criminal liaison as would free him of her. But, owing to the rapidity and directness of their flight, he did not overtake them until they were forced by Pompilia's fatigue to halt.²¹³ When Guido reached Castelnuovo he found Caponsacchi in the inn-yard ordering out horses for the continuance of the journey.²¹⁹ The priest was armed with a

sword²²¹ and made a bold front, saying, "I am a gallant man and I have done what I have done to free your wife from the peril of death."²²⁰

Guido accordingly, instead of taking the immediate vengeance by force of arms which the unwritten law would probably have granted him,²²² called in the authorities and had the wife and the Canon arrested. When Pompilia was brought face to face with her husband in the upstairs room of this inn²¹⁶ she attacked him with a sword,²²⁷ which was snatched from her by a bystander. She then reproached him bitterly for his cruelties.²²⁸ But the couple were soon carried to the local prison,²⁵⁴ and were evidently there two days later according to Pompilia's letter in the last Summary of the Book. But within a few days they were carried on to Rome and placed in the New Prisons.²⁵⁵

A criminal trial for flight of the wife from home and for adultery²⁶⁹ was now begun in the Court of the Governor.²⁷⁰ As a part of it we have the interesting affidavits of Pompilia and Caponsacchi,^{18 34} speaking in their own defense. This trial must have continued throughout the summer of 1697, as the sentence of three years' banishment to Civita Vecchia²⁷¹ was not given against Caponsacchi until September. Pompilia in the meantime had been remanded from the prison to the Convent of the Scalette,²⁷⁶ but as it soon became evident that she was pregnant²⁸³ she was removed to the home of the Comparini on October 12, under security of 300 scudi to keep the said home as a prison.²⁸⁴

The plan of Franceschini had accordingly miscarried—his wife had left him, but he had not secured either divorce or dowry, nor had he placed her in such an evidently criminal light as would enable him to do so later. Still further, Pietro Comparini seems to have reawakened the suit for the recovery of dowry and to have instituted a suit for divorce in Pompilia's name on the ground of cruelty.²⁶⁶ When Guido had gone back home to Arezzo,²⁵⁶ Abate Paolo had to sustain the whole burden of the lawsuits. He tried appeal to the Pope in vain.^{280 281} At last, stinging with the disgrace of his family,³⁰⁵ he left Rome³⁰⁴ and disappeared from the story.

The Comparini, in the meantime, were again cherishing Signora Pompilia as their child in their home, and here she gave birth to a son on December 18,²⁹⁹ the legitimate heir of Guido Franceschini.³⁰⁰ The child was named Gaetano²⁰ and was then hidden away,³⁰⁹ probably to keep him from falling into Guido's hands.

Guido in his Arezzo home received news of the birth. It was his clue for action.³⁰⁷ He secured the assistance of four young laborers^{311 312} and armed them, and they proceeded to Rome, arriving on Christmas.³¹⁷ For a week they lay in wait at the deserted villa of Abate Paolo at Ponte Milvio.³¹⁸ Then, on the evening of January 2,³¹⁹ they proceeded to the Comparini home. Guido knocked and secured admission by

saying he had a letter from Caponsacchi.³²¹ Violante, who opened the door, was straightway slain,³²² and the other two were cut down by the assassins,³²⁴⁻⁶ who then made their escape.³³⁰ As they had forgotten to secure a passport,³³⁷ they proceeded on foot toward Baccano³³⁸ and were overtaken³⁴⁰ by the police after a pursuit of nearly twenty miles.

When the neighborhood, aroused by the outcry of the Comparini,³³¹ had rushed in, they found Pietro and Violante dead, but Pompilia, though frightfully mangled,³²⁶ was still alive.³⁴⁸ In fact she lived four days longer³⁵⁰ and during this time made a profound impression upon the priests, physicians, and others who attended her death-bed, as is evident from their attestations.³⁵³ She died January 6.³⁵⁰

In the meantime, according to common custom, the bodies of the Comparini had been exposed to public view in the Church of San Lorenzo in Lucina⁵⁷ and large crowds of the idly curious had pressed in to see. The crime must have been the sensation of its day.

Then began the murder trial in the criminal courts,³⁶⁵ and it is this trial which occasioned the "old yellow book." It seems to have proceeded very rapidly, as contrasted with modern criminal procedure, as sentence was given February 18.³⁶⁶ And although a brief delay was secured on ground of Guido's clerical privilege,⁴² the sentence was finally executed, February 22, 1698.⁴³²

Such is the story of the Book, a sordid, cruel story, with many a glint of the human heart's worst hell, but it is likewise illumined with the heavenly light of those indisputable attestations of the bystanders at Pompilia's death-bed.

XV. Browning's Way of Using the Story:

This story, as will be seen in the topical notes, is gathered from all parts of the Book, and many of its incidents and motives are subject to dispute. By his plan, however, the Poet is able to take advantage of many of these variant versions in displaying the various characters of the speakers. Thus there is charge and denial in the Book of the fact that Caponsacchi had clandestinely visited Pompilia¹⁷⁰ in her home before the flight in April, 1697. The Poet's plan permits him to state the charge in the words of Guido and to deny it by those of Caponsacchi, and to turn the fact from side to side on the lips of the other speakers. There is no such question of fact in Pompilia's drawing the sword upon her husband at Castelnuovo.²²⁷ But around this undoubted fact are gathered the many interpretations of it which throw such strong light upon its spiritual meaning. These vary from the cynical sneer of a Tertium Quid to Pompilia's declaration that it was in obedience to the word of God, who was leading her; and they are crowned by the grave, earnest approval of the Pope.²⁶⁷ This play of

interpretation as to the motive of the obvious fact is one of the most striking features of *The Ring and the Book* as a work of art. An experienced newspaper man once called attention to the truth of this to life. In his labors as a reporter of news he had almost continually to face a difficulty in that each mind gives its own interpretation to the plainest ascertainable matter of fact and that the discovery of the truth from human testimony is thus rendered very precarious. The Poet has reproduced life in his Poem by this device, and it seems more like the oceanic, ever-varying surface of life than a mere picture or panorama of a certain phase of it.

In the presentation of his story the Poet is likewise true to the descriptive details given in the Book. Many incidents, of course, are presented by the Book without detail, and then it is necessary for the Poet to revitalize the incident by creating a vivid setting for it. We have, for example, very little account of the runaway journey of Pompilia and Caponsacchi from Arezzo to Rome, and he supplies this, especially in Caponsacchi's narrative, without in any way traversing the truth of his material. But Browning was quick to see and to incorporate even the slightest descriptive details of the Book into his Poem. We see this in the reference to the upstairs room at Castelnuovo,²¹⁶ to the terrace and the back door of the Franceschini palace,²¹⁸ to the knife with which the murder was committed,⁴⁴ to the Franceschini coat of arms,⁴⁷ and to Guido's secondary nobility.³⁸ This, however, is more extensively manifest in the Poet's careful adaptation of countless details of information connected with the case at one point or another. Wherever he found a trifling fact he gladly adopted it, frequently raising its significance very considerably in the story. It may be well to give here a considerable list of these petty details as a convincing illustration of his minute dealings with the Book. Such are the facts of Pietro's seeking of Papal alms,⁷³ Guido's falsification of his income,⁸³ Pietro's refusal to proceed with the marriage,⁸⁴ his begging of traveling expenses from his son-in-law,⁹⁹ Violante's pretended prick of conscience,¹⁰¹ the six witnesses to Pompilia's birth,²⁶¹ Guido's pencil-tracing of the letter to Abate Paolo,¹¹⁴ instances of the parsimony of the Franceschini home,¹¹⁷⁻⁹ Pompilia's attempt to quiet her husband's jealousy,^{126-7 129} her first recourse to Conti¹⁴⁵ and Guillichini,¹⁴⁶ Caponsacchi's chance passing of the Franceschini palace,¹⁵² the Bishop's proposed departure from Arezzo,¹⁷⁷ the delay of two days in the plans for flight,¹⁸¹ the signal with the handkerchief,¹⁸³ the manner of leaving Arezzo,¹⁶⁷⁻⁹³ Caponsacchi's laic garb,²¹⁷ "the wicked-looking sword at side,"²²¹ Abate Paolo's consent to the removal of Pompilia from the Convent,²⁸⁸ the hiding away of her child,³⁰⁰ and her final prayer to the Virgin,³⁴⁹ the exposure of the corpses in San Lorenzo,⁵⁷ the death of Canon Conti,³⁶

and the swooning of Baldeschi under torture.³⁹⁰ Such details might be continued still further. Browning's mind was evidently filled with them and they slipped easily into their right places in his general scheme. He supplements these ascertained facts, but seldom contravenes them. This is the method of the careful and honest historian and is rarely found in the great artist to the extent we see it here. The Poet carries this principle of his art so far as to borrow in close paraphrase, we may almost say translation, the descriptive details as to the murder³¹⁷⁻³⁶ and those concerning the scene of execution,⁴³³⁻⁴⁷ as given in Book XII.

We find a significant example of his use of the petty detail of the Book in the characteristic sneer of *Tertium Quid* at the death of Police Captain Patrizi,³⁴⁶ who pursued and captured Guido. In the Pamphlet, p. 212, we read: "This arrest indeed cost the life of Patrizi, because having been overheated and wounded with a slight scratch, he died in a few days." Browning's version of this in his poem is as follows:

The only one i' the world that suffered aught
By the whole night's toil and trouble, flight and chase,
Was just the officer who took them, Head
O' the Public Force,—Patrizi, zealous soul,
Who, having but duty to sustain weak flesh,
Got heated, caught a fever and so died :
A warning to the over-vigilant,
—Virtue in a chafe should change her linen quick.

And the words of *Tertium Quid* just beyond this, lines 1416-24, are likewise adapted from the same Pamphlet.³⁴⁸

One more instance²⁷⁶ may be profitably given in Bottini's figure of the wine bush (RB., IX, 1545-1550) :

I traverse Rome, feel thirsty, need a draught,
Look for a wine-shop, find it by the bough
Projecting as to say "Here wine is sold!"
So much I know,—"sold:" but what sort of wine?
* * * * *

That much must I discover by myself.

Compare with this the words of the second anonymous pamphlet, B. 180:

The title of that case was placed there just as a wine bush hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good and salable and agreeable. Oh! by no means, etc.

It is such repeated use of even the trivial detail of his Book in the Poem that justifies the extended detailed study in the topical notes attached to this volume.

In spite of all this fidelity to fact, the poet does not find himself in a Saul's armor of literality. Like Shakespeare, like every great artist, he had the power to illuminate the mere matter of fact with profound significance and profound spiritual truth. Thus, behind the fact that Caponsacchi delayed two days after the first promise to carry Pompilia to Rome, the Poet sees indeed the excuse of the difficulty of getting a carriage,¹⁸¹ but he sees all the more clearly the profound change of heart of the man Caponsacchi from the fop to the saint. Pompilia's affidavit in the Book tells of her recourse to the Augustinian confessor Romano, and of its failure,¹⁸⁴ but this incident glows with deeper truth in the various versions of Other Half Rome, Pompilia, and the Pope. As a final example of the alchemizing art of the Poet over his material, I add the Book account of the incident of the comedy¹⁸¹ as found in Pompilia's words, which is to be placed side by side with the Poet's version on the lips of Caponsacchi:

His suspicion increased all the more because while we were in a great crowd at the play one evening, Canon Conti, * * * threw me some confetti. My husband, who was near me, took offense at it, not against Conti, but against Caponsacchi who was sitting by the side of the said Conti.

From this grew Caponsacchi's version (RB., VI, 393) :

Well, after three or four years of this life,
In prosecution of my calling, I
Found myself at the theatre one night
With a brother Canon, in a mood and mind
Proper enough for the place, amused or no :
When I saw enter, stand, and seat herself
A lady, young, tall, beautiful, strange and sad.
* * * I was still one stare,
When—"Nay, I'll make her give you back your gaze"—
Said Canon Conti; and at the word he tossed
A paper-twist of comfits to her lap,
And dodged and in a trice was at my back
Nodding from over my shoulder. Then she turned,
Looked our way, smiled the beautiful sad strange smile.
"Is not she fair? * * *"
"The fellow lurking there 'i' the black o' the box
"Is Guido."

This account of the fact in the Poem was transferred to Caponsacchi's lips because it was, in the Poet's conception, the very turning-point in Caponsacchi's life, which stung him awake to all the latent good within him, while Pompilia was more fitly aroused by the dawning sense of motherhood. The play of interpretative power in the above example is but one of many possible illustrations of Browning's right of eminent domain over the field he had seized, and it is in such interpretation that his creative art rises in independence of the Book without disputing it.

XVI. The Environing Life Around the Central Tragedy:

Browning realized that the central life of the subject before him lay in the relationships of his three major characters, Guido, Pompilia, and Caponsacchi; but he also realized that around them was the environing life of Rome of the year 1698—an environment that controlled and forwarded the tragedy at every point. The Poet had frequently scrutinized past ages for such an atmosphere with close human interest, and he had embodied, as we have said above, many a result in his typical human figures of *Bells and Pomegranates*. He had, moreover, the strong and vital example of this feature in artistic plotting in the historical novel of the day. *Henry Esmond* and *Romola*, then but fresh from master pens, were convincing examples of the power of such a created world around the main human interest. It therefore became inevitable that Browning, instead of contracting his view to the intense play of his few personalities upon each other, as he did in his dramas and as is strikingly exemplified by *In a Balcony*, should have gone on to the portrayal of Roman life of a century and a half before. With his intimate knowledge of the history and customs of many preceding generations, he could do this with a fidelity and an accuracy which were at no point the result of such labor as Thackeray or George Eliot spent in getting themselves back into the former day. We should say, still further, that the Poet seems consciously to abandon studious historic accuracy in this respect and exercises the artist's right of eminent power.

In writing concerning this environment he does not present the life of the Rome of the late seventeenth century from its own standpoint of morals and religion. Worldliness in the church and the marriage of convenience, nay and even the marital harshness of Guido, would have been accepted as a matter of course in that day. The Pope's liberal theology and his criticism of the church are as anachronistic as Shakespeare's Roman bells. We doubt if Guido would have been seriously blamed by his own day, and it is not at all improbable that he would have escaped punishment if it had not been for the aggravating circumstances of the murder. But in his judgment of the case the Poet abandons at will the historic standard for what he considered to be the absolute standards in morals and religion. He became thus less true historically, but more true absolutely.

Browning's picture of the domestic and social environment of Pompilia has of course but fragmentary suggestion in the Book. But he could easily imagine the comfortable selfishness of the Comparini, which by force of contrast brought out all the more strongly Pompilia's early flower-like purity and her later saintly patience and fortitude. For the home life of the Franceschini palace, he went rather to his knowledge of the human heart, presenting all the petty meanness of a nobility

which has run to bitter dregs in its poverty. He took certain details from the affidavit of the servant,¹¹⁰ but he made comparatively scant use of this affidavit. Around these two selfish families we feel the presence of a Roman life, productive of countless more of the same types, and they form a heartless, hope-destroying barrier against the escape of Browning's Pompilia, driving her still more utterly to the patience and the faith of God's own saint.

XVII. The Church as an Environing Power:

A far more important feature, however, of that environing world, and almost the whole of it, was the great Roman Church of the day. It had received both Guido and Caponsacchi as sons; it had been present at every moment of Pompilia's career, as the outward guide of her deep, religious emotion; it had adjudged her flight from home and her husband's murderous vengeance. All of these cases, criminal and civil alike, had been in the ecclesiastical courts, as Rome lay entirely under the secular authority of the Pope. It was not a time of supreme worldly pride in the Roman Pontiffs, nor of worldly corruption. Pope Innocent XII had overthrown nepotism, and was himself a man of piety and charity. Yet the same great institution of the medieval centuries and the renaissance still rose as splendidly as its Saint Peter's, a fitting symbol of its strength, pride, and glory. Browning, however, was always more interested in men than in institutions, and was sure to illustrate institutions by men, rather than subserve men to institutions. Throughout the whole range of his work, he had probed with curious interest the many types of churchmanship: The Spanish monk, the Papal Legate in *A Soul's Tragedy*, Monsignor in *Pippa Passes*, and Bishop Blougram. But into *The Ring and the Book* he has gathered as much as in all other places put together. The churchman is as present in the Poem as he is on the streets of the Eternal City, not shrouded behind his uniform, but revealed in his life and purposes. Priestly types appear at every turning of the story and illustrate every throb of passion which animates the great whole. Abate Paolo, Caponsacchi, and Girolamo are priests, and Guido is attached to the service of a cardinal. In the speech of Caponsacchi we are shown his worldly-wise patron, his great-uncle, the Bishop of former days, Brother Clout and Father Slouch, Canon Conti, the Confessor Romano, the good Celestino, the ecclesiastical judges with their smirk at the "peccadillos incident to youth." Then there is the harder, self-seeking clergy of Guido's monologue, where clerical preferment becomes a gambler's chance, and where complaisance to the cardinal is an eighth virtue; his closing speech is addressed to Cardinal Acciajuoli and Abate Panciatichi, and is a bitter ripping up of secrets of the selfish society of which he

has been a part. The Pope himself turns grave as he considers the degenerate conduct of many of the sons of Mother Church. Browning has presented such a church, not in the spirit of satire or criticism, but with the intention of representing truly the hard environment which shut in Pompilia to the brutalities of her husband. The Poet was always afraid of the dominance of institutional religion at the expense of personal religion. He realized, not in religion alone, but in art and in all other inspirations, how easy it is for the soul to become satisfied with a form from which the spirit has fled. He feared a church that stood between a man and his God, and that formulated and fixed his belief. And here in *The Ring and the Book*, Browning presents such a church, with the same confidence in his fidelity to truth as he shows in his monk in the Spanish cloister and Johannes Agricola. From this church might come a Guido and a worldly Bishop of Arezzo, but from it also came Caponsacchi and Fra Celestino, and over it presided the grand old Pope.

The Pope is not merely the crown of the institutional church of his day, gathering within himself all that is best in it, but he is also the mouthpiece of Browning's own comment on the tragedy and of his own faith in spite of its horror. In the Book there occurs only the mere mention of him, in the manuscript letters.⁶² There is no proof that he took any personal interest in the story, nor even that he did anything else than deny Guido the protection of clerical privilege. The sentence against the murderers was by the court, and not by the Pope. The Pope merely took the negative attitude of non-interference. There is, of course, not the slightest hint of his character in the Book. Browning has gleaned from the Papal histories of the day the fact that he was a good old man, something of a reformer, self-denying in his private life, and lavish of alms. He has added to this not the characteristics of another Pope, Innocent XI, as is sometimes charged, but those of a typical wise old age, which has crowned a life of devotion to the good and true.

Browning had a very distinct faith as regards old age. It is not a time of decrepitude but of vision, a time of clear survey of life from a moment of peace at its close. In the Pope, Rabbi Ben Ezra, and John of *A Death in the Desert*, Browning has created three old men of this type, men who realize what old age should be; and all of them were created within a period of five years. We might add to their number the old priest in *Ivan Ivanovitch*. It is noteworthy that Browning makes all of these old men, to a certain extent, his own mouthpieces. They express the philosophy of life and the vision of God and His love, which is found everywhere throughout Browning, and is fundamental to his own personal religious philosophy. Every important doctrine of *Rabbi Ben Ezra* can be paralleled from the other poems of Browning.

The Pope likewise becomes the exponent of Browning's doctrine and of his personal attitude toward the actors in the poems. Here we have Browning's judgment of Pompilia and of Caponsacchi, of the Franceschini and the Comparini. It is Browning who grows sad at heart in blaming his whole world. We may add that Browning has even placed in the mouth of the Pope that apology for Euripides which is so directly a part of his own reverence for the great Greek tragedian, whom he glorified still further in the words of Balaustion. But whether the judgment is personal or dramatic, it undoubtedly greets us as a sane, strong, divine judgment to dispel the chaos of the previous clashing of opinion, and it is a triumph of art.

XVIII. The Law as an Environing Element:

The Church was one of the conditioning elements of the environment of the tragedy, but the law was almost equally important. And of the law Browning had ample opportunity to judge in the pages before him. He uses this material with strong, satiric scorn. He was evidently moved to indignation by the shrewd sophistries of the arguments in the case. Ideally the law stands for justice between man and man, but here it had become a cunning machine devised for defeating real equity and justice. 'His contempt and irony are poured full upon the "patent, truth-extracting process." His indignation was stirred against a class of men who had been in close contact with the tragedy without feeling the slightest sympathy for the sufferers. There is no ray of such feeling at any point in these arguments of the Book, though there is much rhetoric and indignation of a purely professional character. There are also flashes of the contemptuous deference to the legal opponent, which is one of the worst types of professional vanity. Yet, on the whole, the personal characters of all the lawyers of the Book are practically imperceptible behind the professional mask. Browning doubtless felt that they were far more distant from the truth of the case they were dealing with than were the gossips of the Roman streets, who were under mere chance prepossession. In presenting these two lawyers of the Poem, Browning attempts to reproduce by means of characteristic types this great fact of the law, which in the Book governs every phase of the Poet's material.

Browning's humor has admirably interpenetrated his conception of the first lawyer, as he reproduces him in the Poem, and has saved Arcangeli from utter remoteness from our human interest. Of course the whole idea of the birthday feast and of the paternal pride in the little boy is Browning's sheer invention, and redeems in part the vanity of Arcangeli. Browning has also amplified the pompous deference to the Pope. For practically all the rest of the monologue he has followed

the Book with minute fidelity to its letter rather than to its spirit; nor does he follow any one argument, but chooses indiscriminately from all parts of the Book. Every point of law found in the monologue is in the Book: such as the elaborate plea of *causa honoris*,³⁹⁹ and its efficacy in law, the rights of one offended in honor to kill after a lapse of time as well as immediately,⁴⁰⁵ the injury done to Guido's honor by the parents,⁴⁰¹ and all the aggravating circumstances of the murder.⁴⁰⁸⁻²⁰ Moreover, each matter of evidence in the monologue had been given the same bent in the Book. Every precedent cited—those of Dolabella, Leonardus,³⁹⁵ Farinacci,³⁹⁶ Saint Ambrose,³⁹⁴ Matthæus,³⁹⁶ Panimolle,³⁹⁷ Theodoric,³⁸⁴ Jerome,⁴⁷⁶ Gregory,⁴⁷⁷ Saint Bernard,⁴⁸⁰ Cyriacus,⁴⁹² Castrensis,³⁹⁸ Apostle Paul,³⁸⁵ and the strange one of Christ, who is made to say *honorem meum nemini dabo*,³⁹³ are in the Book. The Latin so abundantly used by the lawyer is a very close adaptation of definite passages of the Book.⁴⁶¹⁻⁵¹³ A total of 56 passages, including 814 Latin words, are taken with close accuracy from the Book, while only 31 words in 7 quotations⁵¹⁴ are taken from classic sources, mere scraps of the classics.

It can be seen by what has been said above that the detailed dependence of this monologue on the Book is very extensive, and in no part of the poem has Browning stayed closer to his source. This is probably one of the reasons of the comparative neglect of the monologue by readers. Yet I venture to assert that the reader who can and will read the Latin and its paraphrase as they come in the text, so that he may enjoy all the delightful innuendo of this paraphrase, will find abundant source of entertainment in the speech. It contains far less for the lover of beauty, or of splendid imagination, but in all the range of Browning's shrewd analyses of odd, twisted, or bad characters, such as Sludge and Prince Hohenstiel, none is really comparable with that of Arcangeli. The monologue is purely a mosaic, in which some very large and important pieces are reproduced with absolute accuracy; but there is genuine art in their arrangement for the purpose of reproducing the effect of these lawyers upon Browning's own mind, and they were closejoined by the durable cement of the Poet's irony and his laughter. Browning has also taken fully the opportunity offered him by the manuscript letter of Arcangeli which was bound into the Book. The Poet paraphrases this closely, though with a delicious touch of his own, in the letter of Book XII, 239-89;⁴⁵⁰ the latter half, of course, is purely the invention of Browning, with full sympathy for the rotund rascality of the writer.

In the monologue of Bottini, however, Browning is further away from both the letter and the spirit of the real Bottini. The Poet seems to have taken a distinctly hostile attitude toward this prosecutor of Guido, which mars the fairness of his judgment. Irony and scorn

saturate the introduction to the monologue in Book I. This anger of the Poet probably arose from Bottini's treatment of Pompilia. In the course of his arguments against Guido, the real Bottini makes many damaging admissions about her, which are not at all necessary on the face of the evidence, and seems to have been utterly without regard for her personal character. He makes admissions as regards the love-letters, which were surely false,²⁴⁷⁻⁵² as regards her showing herself at the window at a hiss of her lover,¹⁷³ as regards the use of the opiate,¹⁹⁶ and even offers the very ingenious theory to explain Venerino's testimony as to the kissing during the flight.²⁰⁹ In the Poem, however, such damaging admissions are extended over and beyond this, and touch the case at many other points—the clandestine meetings with Caponsacchi at Arezzo,^{170 174} Pompilia's solicitations of the Canon and others criminally,¹²⁸ Caponsacchi's kissing the unconscious Pompilia,²¹⁸ the receiving of clandestine visits from Caponsacchi after the return to Rome,²⁹³ and the lie in the very hour of death to save her paramour³⁰⁹ and to destroy her husband.³⁶¹ Such admissions are in fact a caricature¹⁹⁷ of Bottini as he was found in the Book, and the Poet evidently paints the portrait under the impulse of his prejudice against the arrogant professional pride and utter moral and religious obtuseness of Bottini. Perhaps it is only fair to add that it was not Bottini's professional business to defend Pompilia, but rather to attack Guido, and he bases his attack not upon the innocence of the victim, but upon the brutal and illegal manner of putting the vengeance into execution. And the court before which he was arguing was doubtless far more ready to follow such a line of argument, and to base judgment upon it, than to feel any sympathy such as Fra Celestino felt for the dying child-wife.

Along with the arrogant professional pride of the Bottini of the Poem, we have a scholarly pride which Browning has caused to influence very subtly the style and illustration of the monologue. The English is smoother and more harmonious, rising at times to real beauty. It is interlarded with classical quotations, there being 21⁵²⁰ such, as contrasted with 5⁶¹⁵⁻⁹ taken from the barbarous Latin of the Book. The Fisc also makes allusions and draws illustrations 33 times from Latin and Greek mythology, history, and literature. This is strictly a dramatic feature; for as Stopford Brooke has well pointed out, Browning is remarkable for the scarcity of such allusions, when compared with other poets.

Over the law, as over the gospel, the good Pope presides to save us from cynical skepticism for this human institution and to bring to a close the selfishness and harshness of the long conflict. And it is he who, according to Browning, saves Pompilia and Caponsacchi from the results of the conventional perversity and wrong-heartedness of this whole environing world of the Italy of 1698.

XIX. The Characters as found in Book and Poem:

The chief interest, however, for the ordinary reader will lie in Browning's method of dealing with the characters of the actors, the human types found in the Book and the Poem; for Browning is essentially a poet of human nature, and it is his men and women who fix the attention of the reader.*

I have already stated that thirty-three names are taken from the Poet's source-material—quite a number of these, of course, are mere names. The minor characters, wherever they are given real lines of characterization, are in general faithfully reproduced from the Book, except for somewhat of a favoring of Pompilia's friends at the expense of Guido's. Abate Paolo is the same cunning diplomat and manager;⁵⁰ Violante the same headstrong, disagreeable woman;⁵⁵ the tone of Fra Celestino's speech is certainly like that of his real affidavits.

The creation of the three major characters, however, presents a far more interesting and important problem; for in their relation with one another we find the true heart of the tragedy, and here it is that the independent creative mastery of the artist soars free from the trammel of fact to display the Poet's vision of truth. One of the chief interests in the Book, accordingly, is in its manifestation of the real prototypes of these three important personages in the Poem. For as ideal representations of the good and bad in human nature, they contain the best Browning has to utter upon the problem of life. The story was unimportant, so far as wordly consequences are concerned, and the characters have to supply its real import. No nation was awaiting the result of this tragedy, no public consequences of dominating importance were dependent thereupon. But the good in the suffering saint, Pompilia, and the soldier saint, Caponsacchi, in their active strife with the demonic in Franceschini, is a sufficient source of interest. God's hand is shown at enmity with the wrong of an evil man backed by an unideal conventional morality. And so, though the story is not of epic consequence, it is of profound importance to the spirit of man. In dealing with the play of these three most important characters, the Poet has increased very considerably the comparative importance of the Caponsacchi of the Book. We turn now to a somewhat more extended study of them. We may remark by way of caution that practically every statement in the Book as regards any of the three is biased—some of these statements are utterly false—and the student must not merely cite the words given, but like the judge must also weigh the evidence offered as to their characters.

* Rossetti Papers, p. 401, July 4, 1869: Browning talked about an article in *Temple Bar*, saying that he, as shown in *The Ring and the Book*, is an analyst, and not a creator, of character. This, Browning very truly says, is not applicable; because he has had to create, out of the mass of almost equally balanced evidence, the characters of the book as he conceives them, and it is only after that process that the analyzing method can come into play.



Dritratto de Sinfelito, Giacomo Franceschini, il quale fu
Decapitato in Roma alle ... febbraio 1698.



XX. Count Guido Franceschini:

We turn first to the consideration of Count Guido Franceschini. He is the most elaborately and skilfully drawn of all Browning's bad men, and they are many. In his earlier works the Poet shows something of the natural historian's interest in evil men—they are described and faithfully reproduced without comment or moralizing. *The Laboratory*, *The Confessional*, Ottima and Sebald, *A Soul's Tragedy*, *Instans Tyrannus*, and *Porphyria's Lover*, all present the criminal in this way. The Poet also dwells at times with curious analysis—we may almost say sophistry—upon the obliquely and erratically bad, as in *Sludge, the Medium*. Later on, however, the bad man took a definite place in the Poet's doctrine, both theological and philosophical. His earlier keen intellectual enjoyment in mere objective presentation, or subsequently in the analysis of the motive of a bad heart, gave way to a sense of its demonic power in antagonism against God and goodness. What is the meaning and result of such antagonism? Can the creature in sin defy its God? Or still more, if he do so, can the Creator for sin destroy His creature, made in His own image? Browning realized the significance of these questions. In their answer lay his very possibility of faith. Guido causes the Poet to search his own heart as thoughtfully as does the old Pope in the Poem. The bad man is himself an epitome of much of the deeper thought of any artist. His decadence, his mastery over the world, and the final nemesis which overtakes him draw largely from the poet's deepest insight into life.

Of all Browning's bad men, none can match Guido in sheer monstrous wickedness. His birth and education have associated him with the conventionally best of his day, while at heart he is of the worst. He is the degenerate son of an effete nobility, as bankrupt in humanity and sense of honor as in purse. He has inherited the position of gentleman, but bears none of the marks of noble birth. His very honor in birth and family is a mere marketable commodity. The strong, proud stock has run to its dregs. He is mean in personal appearance.⁴⁵ Brutality has banished courage, and self-interest has destroyed self-respect.⁴⁶ Poverty has served to accentuate all the latent evil of the race, and has stimulated the inordinate, wolfish rapacity which darkens Guido's conduct. His training has been in the worldly church,⁴² and he is a stone in her inordinate pride. (RB., VI, 313-316.) Yet no true religious motive actuates him. He clings to her in the hope of gain—of immunity in his plunderings—but turns upon her with cynical scorn when defeated in this hope. In his eyes there "is no such thing as faith extant." It is all lies, cunningly contrived for selfish gain. The privilege he claimed as noble and churchman alike is the privilege of sinning for gain's sake. This Guido was the natural result of the conventional society in which he moved. He observed its conventional morality and religion because

of the gain they bring or the lash they carry, and until the time of the catastrophe would be regarded as little worse than his neighbors.

His catastrophe began far back in his angry resentment at being poor. The privilege of his noble birth was checked by poverty. He would have plundered if he had been strong enough, but turned rather to a career of gain in the church. Defeated again and again in his ambition, he at last found himself, at the age of forty-six,⁴⁴ out of the "service of a certain Cardinal without a soldo."⁴¹ Then he wedded a child-wife for gain,⁷⁸ and in the excess of his greed defeated his own cunning plans;¹⁰⁸ for his cruelties to the Comparini brought their denial of Pompilia's rights as child.¹⁰³ In his resentment he wreaked brutal vengeance on the child-victim in his power. Yet there was more than defeated greed, as Browning sees it, in Guido's attitude toward his wife; there was a fierce hatred of her goodness as goodness. "Hate was the very truth of him." Her presence was a constant rebuke to the sin within him. Browning has suggested a situation somewhat similar to this in his *Instans Tyrannus*; for Pompilia's patient endurance aroused his resentment:

I advise—no one think to bear that look
Of steady wrong, endured as steadily,
* * * * *

How does it differ in aught, save degree,
From the terrible patience of God?

This devilish resentment against goodness intertwines with the brutality and greed of Guido's heart. No ray of kindness relieves his dark nature, no mother love nor brother love, no piety nor reverence.

For I find this black mark impinge the man,
That he believes in just the vile of life.

Now such utter depravity of heart, loathsome as it is, is made interesting by the presence of no mean intellectuality, chiefly a matter of preternatural cunning. Whatever our loathing of the man, we can not but be impressed with the mental vigor of his speeches, an impression somewhat different from that gained through the speeches of others concerning him. This it is that lends the necessary element of terrible power to what would otherwise be merely despicable. This intellectuality he shares with such villains as Iago, and Satan of *Paradise Lost*.

Yet the Poet feels that God leans in mercy over the life of Guido, bad as it is. He grants

Probation to the oppressor, could he know
The mercy of a minute's fiery purge!
The furnace-coals alike of public scorn,
Private remorse, heaped glowing on his head,
What if, * * *
The lost be saved even yet, so as by fire?

The very forgetfulness of Guido in the matter of passport, as the Pope interpreted it,³³⁷ was the providential Hand arresting Guido on the verge of eternal destruction; for he would have gone unprepared to the death his fellow assassins were plotting against him.³³⁸ But God gave him a moment's respite to confront his crime, to realize and hate himself. And it is the Pope's earnest wish that in the very suddenness of his fate

may the truth be flashed out by one blow,
And Guido see, one instant, and be saved.

That is, Guido with the fierce terrors of death staring him in the face may recognize his own evil, may see the supreme value of love, may recognize the love of God, and even the loving saintliness of his wife, and this, in Browning's idea, meant salvation. Such is the significance of the final cry for forgiveness:

Abate,—Cardinal,—Christ,—Maria,—God,—
Pompilia, will you let them murder me?

Browning, the lover of Pompilia, perhaps shared Caponsacchi's grim wish, lines 1901-54, as to the fate which should overtake Guido, but Browning, the seer and lover of man, would claim even a Guido for God. For in *Apparent Failure*, he says:

My own hope is, a sun will pierce
The thickest cloud earth ever stretched;
* * * * *

That what began best, can't end worst,
Nor what God blessed once, prove accurst.

Pompilia's words as regards him are blessing and not curse:

We shall not meet in this world nor the next,
But where will God be absent? In His face
Is light, but in His shadow healing too:
Let Guido touch the shadow and be healed!

Now the Guido of the Book is a far more commonplace villain than Browning has conceived him. His mean personal appearance⁴⁵ is taken directly from the Pamphlet. Unfortunately Guido's own testimony is omitted from the Book, except in a few fragments cited by his lawyers (pp. cxxvii-viii), and so we can not judge of his character from his own mouth. Yet there is much proof of the real character of the man in almost every argument of the Book, though at no point is there any clear final characterization of him. Brutality, craft, greed, are alike present; and the reply to the Anonymous Writer lays continual stress upon greed as a dominant passion.⁴⁶

Concerning Guido's earlier career the Book gives us no further information than that he spent thirty years at Rome in the service of a Cardinal; this has quickened Browning's imagination to add the narrative on the lips of Guido, which is so full of the self-seeking ecclesiastical life of the year 1698.³⁹ Under the stimulus of the crafty wits of his

brother Paolo,⁵⁰ he played for the hand of a wealthy child-wife,⁷⁶ a common practice in the society he frequented. His duping of the self-seeking Comparini⁸² would have been considered a case of Armenian meeting Portuguese. Not till he began his abuse of Pompilia did he disclose the rough brutality of his nature. Of these cruelties^{111 122 132-4} there is abundant evidence in the Book. In them he was encouraged by his mother's example,⁴⁹ if we may believe the affidavit of the maid Angelica.¹⁰⁰ Yet he was evidently able to hold his own in Arezzo by reason of the rank of his family; and he had the countenance of both the Governor¹³⁵ and the Bishop.¹³⁹ This is easily explained if we but remember that in Italian society the husband's right over the wife is almost undisputed, and that there were only the complaints of a strange child-wife from Rome against the word of a family of recognized rank. Guido's deadly hatred was the normal effect of the disclosure of Pompilia's disgraceful birth and this was accentuated by the threatened loss of the dowry.⁴⁶ Probably his friends sympathized in this hatred. How then should he get rid of her? Divorce was impossible save on the grounds of adultery; so adultery, either real or feigned, must be proved against his wife. He doubtless felt that he could by giving opportunity entice her into an intrigue. Even such a riddance of her could add little to the chagrin and disgrace he already suffered. His cruelties were partly brutality, partly craft—meant to drive her to flight. The interposition of the maid Maria Margerita^{54 154} was almost undoubtedly at Guido's instigation. The letters she bore back and forth must have been the husband's forgeries, through which he hoped to drive Pompilia and Caponsacchi together.¹⁶⁹ There is no other reasonable explanation of the facts of the Book. The trickery of Guido is further proved by the pretended love-letters,²³² for the husband asserts that these were a genuine correspondence from a flirtation in Arezzo. No one can read them now and believe them to be of Pompilia's composition. This is made the more probable when we see that he practically forged the letter to Abate Paolo.¹¹² The very fact that this packet of love-letters was all ready for the precipitate departure of Guido in pursuit of the fugitives indicates that he was deep in his plots before the flight. The false charge concerning the sleeping potion¹⁹⁶ confirms still further the belief in his plot. The only point at which his cunning seemed to have failed was in that Pompilia and Caponsacchi kept themselves pure in their perilous flight.

We see, therefore, that brutal selfishness softening itself by an intricate cunning was the character of the real Guido. Intrigue and falsehood were his favorite weapons; when they were finally broken, the brutal element in his nature drove him on to a cruel murder. Even then, his cunning, his recognized rights as a husband, and the prestige of his family in Arezzo would have set him free in the Tuscan courts.²⁹⁴

But his plea that he was a wronged husband failed of proof in Rome, and, perhaps to the surprise of many, he paid the penalty of his crime.

Browning seems to have realized fairly and fully this real Guido Franceschini. He also realized that in his own day Guido had many defenders and that his cunning had done much to baffle those who would judge him. He accordingly reproduced this very effect in the Poem, until not a few persons when they have finished his first monologue are inclined to believe his plea. He baffles and wins the book-spectator as he baffled and won those actually around him. This is a marvelous achievement in character delineation.

Yet in the end the villainy of Guido becomes unmistakable long before he shrieks for the forgiveness of Pompilia. And Browning has made him his fullest and most significant example of evil in man. To do this he of course has had to go on beyond the limitations of the Book-character. He must raise Guido above the commonplace before he is fitted for poetic treatment. The dangerous and self-possessed cunning, the intellectual vigor, the cynical lack of faith in good and aversion thereto have been added by the Poet. To use Shelley's dictum in his Introduction to the Cenci, he has increased the *ideal* depravity of the character. Yet in thus darkening the motive passion and personal attitude of Guido, he has not added a single item to Guido's chicanery and crime. We know from the Book that Guido was bad and see the frightful crimes that gather to his charge, and yet we do not see Guido in the Book until the artist intervenes. Fra Lippo Lippi's words are apropos of this power of the artist:

We're made so that we love
First when we see them painted, things we've passed
Perhaps a hundred times nor care to see;
And so they are better, painted—better to us,
* * * * *

* * * Art was given for that;
God uses us to help each other so,
Lending our minds out. Have you noticed, now,
Your cullion's hanging face? A bit of chalk,
And trust me but you should, though!

We see, therefore, that it is not the fact of Guido's career as the poet drew it from the Book, but the interpretation of the meaning, power, and destiny of evil as Browning found them for himself, which makes Guido the most significant villain in English poetry since the days of Shakespeare; and while the fact of Guido's execution was a matter of history, the inevitable nemesis of ruin which grew out of Guido's long career of subtle selfishness found its origin in the insight of the poet. The very fact that he is not the villain at war with society, but is the semi-respectable ultimate of certain conventional phases of selfishness, makes him all the more important in showing what Browning regarded as real moral evil.

Behind Guido, "midmost blot of black," are discernible the rest of that dire family as a fitting environment—"the fox-faced, horrible priest," Paolo; "hybrid" Girolamo, "part violence, part craft"; and

The gaunt grey nightmare in the furthest smoke,
The hag that gave these three abortions birth,
The unmotherly mother and unwomanly woman.

All these are in the Book, and we find the accusation of craft and trickery against the first,⁵⁰ of lust and brutality against the second,⁵¹⁻² and of miserly cruelty against the mother.⁴⁹ Yet the lurid, hellish tints, the deepest shadows, are of Browning's imagining and they are partial explanation to him of Guido's own character. They have fostered and forwarded all that is worst in him. To them all the Pope gives his scathing word of denunciation, as well as to the hard world of Arezzo behind them—the Governor, the Bishop, the Confessor, and the cutthroat assassins.

XXI. Francesca Pompilia Franceschini:

Over against this Guido, with whom selfish worldliness has united her, lies the dying child-wife, Pompilia. The four years of cruel antagonism between her good and his evil have closed in the triumph of that public death-bed. Fra Celestino's testimony bears ample evidence to the saintly spirit of her closing days.⁵³ The strife had not been one of mere brute power, but of spirit. The evil in Guido had loathed the good in his wife and had sought not merely to maltreat her, but to destroy her soul.¹²¹ This passion became almost as strong as his greed.⁴⁶ The good in her, on the other hand, shrank in terror from his presence. She was to conquer by that hardest of all conquests, through suffering. When Guido had done his worst to her, he had but destroyed her body which he had ruined. Her spirit rose triumphant at the close of her short life. "Everywhere," says the old Pope,

I see in the world the intellect of man,
That sword, the energy his subtle spear,
The knowledge which defends him like a shield—
Everywhere; but they make not up, I think,
The marvel of a soul like thine, earth's flower,
She holds up to the softened gaze of God!
It was not given Pompilia to know much,
Speak much, to write a book, to move mankind,
* * * * *

Yet if in purity and patience, if
In faith held fast respite the plucking fiend,
* * * * *

If there be any virtue, any praise,—
Then will this woman-child have proved * * *
Just the one prize vouchsafed unworthy me.

1895.

Maria Bartoli. Sefam. Germano in età d'anni 43. figlio di
Dott. Dr. Dario moglie di N. col. Dodi Borgo. morì d'un accidente nella cas-
ta dove abitava che ha dovuto subire una coda per sopravvivere.

M. sig. Giacinto Dardi. Signore di 55 anni. Figlio di
Carlo Dardi che morì della sig. Maria Giovanna Valentini. Ross.
morì nella Comune di Montebello nel 1880. nella quale abitava allo studio del Gondola.
vicino alla chiesa di San Vito e fa parte della Comune.

A. 5:

Ladisio Cesarini. Omegna. Comune di Roni. 50 anni. Ha tre figli.
fig. Riccardo Cesarini. 30 anni. Molti figli. Guido Cesarini. 17 anni. Di Torino.
figli nella Comune di Montebello. Dove abita Maria Anna. Madre di
piccolo fratello. Signor Vieri. ex fabbro in gennaio.

Browning's art often lingered over the creation of women, and Colombe and Balaustion are proud marks of this loyalty to them. He had also sketched the woman-victim in *My Last Duchess*, and elaborated her figure in *The Flight of the Duchess*. But both of these were high-born ladies, of sweet, sunshiny natures, far removed in social rank and disposition from Pompilia; and in neither of them is a stronger womanhood developed through affliction. Mildred also is a victim, though stained with sin; but she is too weak to save herself or her lover, and we feel pity, not reverence, for her. In Pompilia, Browning has gathered what seemed to him some of the highest womanly qualities, spiritual insight rather than mere intellectuality, fortitude in suffering rather than energy in antagonism, faith in God, love of her child, and an ignoring rather than an ignorance of sin. She had neither genius nor executive energy, nor even simple joyousness. Yet Browning felt that the spiritual element latent within her had that power of true benefaction which is the mark of saintliness. These are the accepted characteristics of the Virgin Mary, and as such she seems to have appeared to Caponsacchi. More than once he speaks of her as the Madonna and, as the Poet portrays her, she has much in common with the mother of Christ, as a type of womanhood. We may also note that this may have suggested to the Poet her thought of the immaculate conception of her babe,²² when she shudders to think of Guido as its father. But there is another influence in the creation of this ideal character beside that of the Madonna, it was the Madonna of his home, the mother of his own child, whose spiritual nature was as noteworthy as her intellect. And before this spiritual nature the Poet bowed in humble reverence. One of his friends (*Scribner's Monthly*, December, 1870) tells of his saying: "That he did not feel worthy to unloose her shoelatches, much less call her his own." Mrs. Orr (*Life*, p. 409) says still further:

Mrs. Browning's spiritual presence was more than a presiding memory in the heart. I am convinced that it entered largely into the conception of Pompilia.

It takes, however, both the throbbing humanity of Balaustion and the saintly glory of Pompilia to express fully the nature of Elizabeth Barrett Browning as she appeared to her husband.

Browning's artistic skill is well exemplified in the way he communicates to his readers a feeling for Pompilia's beauty of face.

A lovelier face is not in Rome.

That she was in fact beautiful is strongly suggested by the word of the Book, though little definite notion of this beauty is there given. But

Browning evidently became a worshiper of this sad, strange, beautiful face which haunted his imagination;

The same great, grave, grievous air
As stands i' the dusk, on altar that I know,
Left alone with one moonbeam in her cell,
Our Lady of all the Sorrows.

She is the "lily-thing to frighten at a bruise." The Poet over and over again thrills his reader with his own reverent sense of this beauty, not by describing his heroine, but by emphasizing the effect of a spiritual radiance which seems to emanate from her face. It was this face which converted the whole life of Caponsacchi, and it was this face which Guido loathed with a deadly hatred and which he cut to pieces. That Browning had marked skill in describing mere beauty of face is seen in his little poem, *A Face*, suggested to him by his girl friend Emily Augusta Patmore. Yet in his mature poetry he seldom describes his favorite heroines. The personality in the face rather than the beauty of feature is his endowment for Pippa, Colombe, Constance, the Duchess, Balaustion, and the dream-wife of *By the Fireside*. And Pompilia's spirit-beauty illumines the darkness of the whole somber plot.

This child-wife of Guido is indeed strong in her faith, even beyond the natural probabilities of her years and surroundings. Yet Browning has declared, "She is just as I found her in the Book." * This assertion seems to be based on the strong impression made upon the Poet by the sworn evidence of Fra Celestino and the others who ministered to her while dying, and the reader of this introduction should here insert the translation of it (pp. 69-73). Elsewhere in the Book such a character for the real Pompilia is hard to find. She was undoubtedly of vile parentage.¹⁰⁵ In the legal arguments her character and motives are dragged through the mire by the sophistries and jargonings of the lawyers, and just such incriminating explanations and acknowledgments are made as anger the reader of the monologue of Bottini. Even Guido's accusers speak of her merely as "the unfortunate child" and the "wretched girl." Some of the witnesses show pity for her suffering, but not even the sworn testimony of Caponsacchi¹⁰⁶ displays any recognition of her character as it finally evidenced itself in the hour of her death. Her own affidavit¹⁰⁸ shows simplicity and innocent suffering, but gives no hint of her more striking aspects of character; it has no word concerning her faith in God, her thought of her child, nor of any personal feeling toward Caponsacchi. Almost the sole fact-basis for Browning's conception of her character lies in the sworn testimony of

* "I asked him if it did not make him very happy to have created such a woman as Pompilia; and he said, 'I assure you I found her in the book just as she speaks and acts in my poem.' There was that in his tone that made it evident Caponsacchi had a rival lover, without blame." Rev. John W. Chadwick in *The Christian Register*, Jan. 19, 1888.

Fra Celestino and his associates,³⁵³ who were her spiritual guides in death. No one can read these without an absolute conviction of her saintly purity and patience. Those men of long experience who surrounded her death-bed were deeply moved by her innocence, her tender forgiveness of those who wronged her, and her faith in God. Yet elsewhere in the Book even this testimony is distorted and ridiculed by Guido's lawyers.³⁵³

To this highest Pompilia of the Book Browning has added greatly—in fact he has added the important features of her characterization without transgressing the definite limits of fact. In the Book there is not a hint of Pompilia's sense of motherhood,²¹ which according to the Poet was the real motive of Pompilia's flight from Arezzo and was the quickener of her new trust in God, that came with the impulse to save her babe. In her monologue this sense of motherhood is one of the tenderest human traits of Pompilia as her motherly faith and motherly solicitude dwell on the thought of the little Gaetano.²⁰ The evidence we have as to the beautiful motherliness of Mrs. Browning makes us look to her as the source of this new trait in Pompilia's character. The Poet's belief in the privilege and beauty of motherhood as seen in Pompilia should be studied in the light of the Priest's words thereon in *Ivan Ivanovitch*. No more sensitive and spiritual conception of motherhood in its deeper experiences can be found in English poetry.

Another very important addition to the Pompilia of the Book is her love for Caponsacchi. In the Book she merely turns to him as a rescuer from her desperate plight. Here, as often elsewhere, Browning defies the merely conventional rightness of appearances. The fact of her flight from home in company with a young priest seemed compromising enough to the lawyers in the case. The prosecution against Guido even acknowledged that Pompilia may have made love to Caponsacchi for the sake of extricating herself from deadly peril at the hands of her husband. Yet, in spite of the accusations and inferences of the lawyers, aside from certain forged testimony, there is no evidence in the Book of any love between Pompilia and Caponsacchi.¹⁵⁰ Browning might have taken advantage of this fact and have represented them as victim and rescuer with no other bond between them than this which had risen by chance. It would have made an easier case to defend in the eye of the world. Browning, however, was far more apt to seek out difficulties of this kind than to avoid them. He knew of the presence in this world of a love that is lust, and such love was repeatedly charged against Pompilia by Guido's defenders. Why, then, did he not deny love in them? Nowhere does he show himself more daringly creative than in acknowledging on the lips of both Pompilia and Caponsacchi the presence of love. He could do this because he recognized a higher spiritual love, independent of the feeding passion of the body—

a love which is worship of the good and heavenly and ideal as embodied in man or woman, a love which is a real yearning up to God. And herein, he has humanized the saintliness of his two ideal personages.

Such "love is best"; such love is the "prize of life"; "the true end" for which we live is in "this love way with some other soul to mingle." With this conception of the purifying and ennobling nature of love, Browning need have no fear of any damaging effect of such an admission. It would rather be natural in his opinion that two noble souls, even in such a dark hour, should recognize each other instinctively and yearn toward each other. The conventional world around them would have sneered at their love as being only a thin veil of lust; but Browning felt in it a crowning glory to his soldier-saint Caponsacchi and his suffering saint Pompilia. Such a love looked far beyond the ordinances of man in conventional marriage.

With gold so much,—birth, power, repute so much,
Or beauty, youth so much, in lack of these!

When Caponsacchi came in answer to her prayer for help, and when she saw in him "God's hand visibly at strife" with evil, her woman's love went out to him as the purest and best of men. He had saved not merely her body but her soul, which in its respite from suffering had seen God and had risen to a higher law.

Through such souls alone
God stooping shows sufficient of His light
For us i' the dark to rise by. And I rise.

This presentation of a purely spiritual affection would have been impossible to an Elizabethan and would have been conceived only by a very high-minded and pure worshiper of woman.

In the hour of her death, Pompilia dwells not upon the suffering and the evil of the past, but upon the three great spiritual blessings of her closing life: "Her faith in God, held fast despite the plucking fiend," the love for her friend and helper, and her mother love. On these three rests her peace in death; and of these three only the first is brought out in the Book.

The consideration of Browning's Pompilia in the light of the Book would be incomplete unless mention were made still further of Browning's fidelity to truth in giving the apparently incriminating details as he found them in the documents before him. The Poet was too confident of her character to court concealment. Her single flash of action in the sword flourish against Guido at Castelnuovo is frankly vindicated by the Pope, lines 1072-85.²²⁷ No more damaging piece of evidence was found against her than what Guido's lawyers triumphantly brand "the lie about the arrival at Castelnuovo." Pompilia asserted that she and Caponsacchi had reached the inn of Castelnuovo at dawn,²¹²

only an hour before her husband overtook them; while Caponsacchi agrees with all other witnesses in saying that they had arrived in the evening and had spent the night there. To remove the dangerous implication of this apparent falsehood the lawyers against Guido claimed that she had merely lied for policy's sake, and that no vice had been concealed behind the lie. Browning's explanation rests in the fact that she had swooned in the evening light and had remained unconscious with fatigue through the long hours which had followed.^{212 213} The driver's accusation that the fugitive couple had kissed during the journey is likewise stated and met. Browning was willing thus to state even the most damaging evidence of the Book.

We must say, in conclusion, that Browning has been far too modest in his claim that he has presented Pompilia as he found her. Her story is indeed retold much as it had been in the Book; her sufferings are the same, her patience even unto death is the same. But even the hard, cruel facts are softened by passing through her soul. As she says:

Being right now, I am happy and color things.
Yes, everybody that leaves life sees all
Softened and bettered.

Her own sinful mother's life,¹⁰⁵ Violante's trickery,⁶⁵ and the prospect of her babe left alone, are seen gently. The real glory of Pompilia's character has been created by the Poet in expanding the partial truth of fact as he found it into one of the most masterly portraits of the suffering saint in all literature.

With her parents Browning has by no means taken the liberties he uses with the Franceschini. Their conduct throughout the case, as presented in the Poem, is true even in the minutest details of fact. They are thoroughly bourgeois.⁶³ Pietro's self-indulgence⁷¹ and his frequenting of taverns⁹⁷ are facts of the Book, and the Violante of fact has all of the disagreeable traits presented by Browning.⁶⁵ The anonymous pamphleteer speaks of her pride and calls her a "very shrewd woman, and of great loquacity"; easily moved by the thought of a grand alliance for her daughter, and determined to have her own way, even by means of a secret marriage,⁸⁵ and full of cajolery afterward.⁸⁸ The Governor of Arezzo also says that "she presumed to domineer over the house, and to keep the keys of everything."⁶⁶ Rome's gossip might mouth her reputation and do it little harm. Pompilia seems as utterly unrelated to them in character as in body; her home environment as a whole was a foil rather than a cause of her goodness. And we may say parenthetically here that Browning is so thoroughly a believer in the independent power of human will to triumph over heredity and environment that the later nineteenth century literature on this subject hardly affects him at all. Such a late study as *Halbert and Hob* is strikingly unlike Browning's usual attitude in this respect.

XXII. Canon Giuseppe Maria Caponsacchi:

In the portrait of Caponsacchi, the third person of this central group, Browning has been still more daringly and splendidly inventive beyond the fact of his material. The real Caponsacchi's relation to Pompilia had been confined almost solely to the crisis of her trouble. Browning saw, however, in the mere hints of courage given in the Book the possibility of an ideal heroism to be placed over against the ideal villainy of Guido. Caponsacchi was twenty-four years old at the time,²⁹ a nobleman, and a subdeacon in the church of the Pieve of Arezzo.²⁷ Pompilia tells us that her husband became jealous of the young man because he had stopped beneath her windows to talk with certain young hussies of the city.³² This seems the sole basis for the frivolous flirtation of Caponsacchi, as Browning has conceived it. Guido took further umbrage because Caponsacchi was in the habit of passing their house,²⁸ and he flew into a murderous rage after the incident of the comedy told by Caponsacchi in his monologue.³³ It seems not at all improbable that his jealousy was feigned as part of the elaborately cunning scheme of Guido to drive his wife into a criminal intrigue with the young Priest.²⁹ ¹⁵⁰ The reader may interpret the husband's choice of Caponsacchi for a part in such a scheme as indicating that the priest was originally a proper candidate for the intrigue. When the torture became too hard to bear, Pompilia turned at last to Caponsacchi¹⁴⁹—after seeking aid elsewhere in vain¹⁴⁸—because she had heard that "he was a resolute man." Canon Conti, according to the Italian pamphlet, had suggested him to her³⁵ and says of his friend that "his spirit had stood every test."²⁸ There are other hints of Caponsacchi's courage. The very act of flight with Pompilia might well make a brave man shrink as he did, when he said at first that he was unwilling to have anything to do with such an affair.¹⁶⁰ ¹⁷⁰ "Yet at last the impulse of charity and pity prevailed upon him to free this innocent woman from death."¹⁸⁰ And when Guido overtook the fugitives at Castelnuovo, and "found Caponsacchi urging that the horses be harnessed for continuing the journey,"²¹⁹ the latter faced him with the words:²²⁰ "I am a gallant man, and what I have done I have done to save your wife from death." It is only fair to say that Guido's lawyers recognized this courage of the man as mere criminal daring and call him dare-devil²⁹ (*scapezzacollo*). Arcangeli also speaks of him as the "terrible priest," and Spreti denominates him as "a young man, brave and forceful, provided with arms and accustomed to sin, and, what is more, both prompt and ready to resist." There can be little doubt that he was a man of force and spirit. His own affidavit³⁴ has a manly ring, though not rising to any heroic pitch.

Browning might have accepted such a Caponsacchi as he was and have given him a merely incidental and external relationship to the

tragedy.¹⁸⁰ His art was deeper and wiser than this. He created instead a soldier-saint, a true Christian hero, as a foil to Franceschini. Caponsacchi has become the most elaborate and the most interesting of Browning's pictures of noble manhood. He differs decidedly from the earlier types of Browning's heroes, such as Paracelsus and Luria. They were men devoted to a great idea, and their heroism lay in their integrity and passionate devotion thereto. Caponsacchi's devotion, however, is to no such idea, but to a woman of flesh and blood. Years before, in Valence and Berthold, the Poet had vied with himself to create a man worthy of his Colombe. Still other types of hero appear in Pheidippides and Herve Riel. None of these, however, are at all comparable with Caponsacchi. I like to think that, as the Pope represents the graver, wiser, and more judicial attitude of Browning's mind toward the tragedy, so Caponsacchi represents the passionate, impulsive side of his nature—his indignant partisanship therein, just what Browning would have felt at twenty-five—what he did feel in *The Glove* and *The Flight of the Duchess*.

Without any assistance from the Book, Browning has imagined what lay in the years previous to this splendid outburst of manhood. The hero was born into the same social and religious environment as Guido, and early turned to a worldly career in the church. A worldly churchmanship can hardly retain him as its own when the innate sincerity of his unspoiled nature faces corrupt ecclesiastical practice. But once the vow passed, he seems to be slipping acquiescingly into a place in the ranks of a pleasure-loving, courtly clergy. He is a graceful and adept conformist to the customs around him. He practices poetry in a Marinesque Adoniad, finds diversion in Lightskirts³³ at the theater, is enviably popular with the fine ladies of the city, and can digest without a grimace the archbishop's jokes. The finer nature, which had shrunk awe-struck at the strictness of the vow of the renunciation of the world, was vanishing in the "fribble, fop, and coxcomb." Then suddenly he was brought face to face with the

lady, young, tall, beautiful, strange and sad.
* * * *

That night and next day did the gaze endure,
Burnt to my brain, as sunbeam thro' shut eyes,
And not once changed the beautiful sad strange smile.

Caponsacchi "bowed, was blessed by the revelation of Pompilia"—from that hour he was a changed man.

Browning's purpose evidently was to make Caponsacchi no mere impersonal helper in the flight of the wife from her husband; but in that event to bring him also to the crisis in his life, to the moment of the making of the Christian hero out of the conventional fop. Browning liked to conceive of his characters in their earnest crises, as at such times

the whole latent character would declare itself. His words in *Cristina* on this subject are too well known to need quotation. The young priest "was named and known by that moment'sfeat, there took his station and degree." The conventional world around him became irksome, a better taste and a truer religion found birth with his love. He says:

my life
Had shaken under me,—broke short indeed
And showed the gap 'twixt what is, what should be,—
And into what abyss the soul may slip.

At the second meeting with that "great, grave, grievous face," his call to duty came, a hard duty, demanding the rise of the true man within him. Browning ignores the word of the Book here, which says that he at first refused to have anything to do with such a questionable and dangerous undertaking.¹⁷⁹ Caponsacchi in the Poem instantly accepts this new duty of self-sacrifice, because he has been changed to a nobler self by the look of the lady. The spirit of self-sacrificial love, which is the essence of Christianity, became the living motive of Caponsacchi, and we feel that Browning would assert that in the crisis he has risen to real Christian heroism.¹⁸⁰

Now all of this element is added by the creative instinct of Browning. We have little evidence in the Book that the flight with Pompilia had been more than a superficial adventure to the real Caponsacchi. His rise to the noble attitude of his later manhood is as much the creation of the Poet as is the early worldly masquerade before his meeting with Pompilia.

It seems not improbable that the legend and character of St. George of Merry England may have had much to do with the Poet's ideal of his soldier-saint, just as the Madonna had governed the ideal of Pompilia. Browning had doubtless seen Vasari's fine *St. George Slaying the Dragon*, which stands as the altarpiece in Caponsacchi's church. It is no mere chance that the Poet changed the date of Pompilia's rescue¹⁸⁴ from April 29 to April 23, St. George's day. (RB., VI, 1111.) And the rescue of the maiden who lay at the mercy of the hideous cruelty of the dragon bears a striking analogy to the story which the Poet had found in this old volume. He has also compared this rescue with the story of Theseus and Ariadne—the St. George legend of ancient Greece. The Poet, moreover, has made reference to Caponsacchi as a St. George five times in *The Ring and the Book*.²⁸

Browning has not merely added the conversion of the worldly Caponsacchi to the higher possibilities of his spiritual nature, but he has also added the deeply passionate yet profoundly reverential love of Caponsacchi for Pompilia. The addition of this love-element to the character of Pompilia has been mentioned, but something must be added here. In both of them love was the occasion of a spiritual revolution. In Pompilia's eyes he had been God's saving arm, a strong man full of pity

to her who had been accustomed to the selfishness or harshness of men. To him she had been a revelation of God dwelling in woman as purity, long-suffering, and godliness: an embodied Madonna, Our Lady of Sorrows. She challenged his worship in the most profound religious sense, rather than in the conventional, sentimental hyperbole of romantic poetry. He dwells on no pretty graces nor mannerisms, but accepts his miracle of the revelation of the Divine motherhood, self-authorized. She is the

snow-white soul that angels fear to take
Untenderly * * *

The glory of life, the beauty of the world,
The splendor of heaven.

Wordsworth has well described such a love :

Love that adores, but on the knees of prayer,
By heaven inspired; that frees from chains the soul,
Lifted, in union with the purest, best,
Of earth-born passions, on the wings of praise
Bearing a tribute to the Almighty's Throne.

Browning might have given such an other-wordly feeling to this bond of love as to have greatly reduced our interest. Such is the devotion of the confessor, Fra Celestino.³⁵³ This would have been the easier and more prudent way of dealing with two attractive young persons in so dangerous a situation. He prefers, however, to make each heart stir with an earnest personal passion for the other. In Pompilia it is a serene feeling, which rests purely by the side of her mother love and her faith in God. In Caponsacchi it is an overmastering flood of devotion to her service and of indignation against those who have wronged her. In each case it is the earthly crown of a true manhood and womanhood, coupled with a sincere devotion to God. In Caponsacchi it all but spoils his case, giving some ground for the accusation that "he loved the lady as they called love." Browning, however, has at no point in his poetry shown more splendidly the utter independence of real passionate love from "love as the world calls love," of Ottima and Sebald.

The Caponsacchi as thus conceived is worthy of his important place at the heart of Browning's masterpiece and is as great a creation as any in the whole range of Browning's poetic world.

XXIII. Browning's Independence in Character Creation:

In the consideration of these three figures we find the masterly creative freedom of Browning as he rises above his material. The Book gives but confusedly and imperfectly these characters. Guido rests under harsh charges in the Book, but extenuating pleas are made in his behalf. The facts of Pompilia's life are discernible in the Book, but her character is but mistily and confusedly presented. Caponsacchi's

fortitude is plain, but it is charged with being the fortitude of deviltry. One of Browning's chief problems, as a student of truth, was to bring order out of this chaos of charge and countercharge. But as an artist he had the far more important problem of raising the three to the province of art, vitalizing and idealizing these characters till, laying aside their commonplaceness, they would stand for the Poet's master conceptions of human nature, his attitude toward conventional society, his faith in God. Certainly in this part of the Poem the restraining leash of fidelity to truth is no hindrance to his poetic flight, and herein we get the unique, personal element of power which every great artist must contribute to the materials he works upon before they become vitally his own in art.

XXIV. The Final Significance of this Source-study:

All that has been said above throws light on the whole problem of the creative artist's relationship to his material. Nor will it do for one to accept or reject certain guiding principles on mere *a priori* grounds. We have here a great artist and a great resultant Poem. The latter fully justifies him against any critic's cavil as to how he might have written a better poem with the same material.

The Poet seems to have been guided all through his creative activity by a determination to be true to his material—"So absolutely good is Truth," he says in *Fifine at the Fair*. He accordingly mastered the facts of the Book even to its trivial details. These he reproduces in his Poem profusely, fitting them unlaboriously into the text and the current of his verse. He had so filled himself with these facts that they became his facts; and these names, dates, descriptive details, petty sophistries, citations of authorities, reproduce themselves as vital parts of the resurrected story. The fragments marshaled themselves out of chaos into one pervading, unifying cosmos. Instead of the crowded, sordid, confusing presentation of a criminal trial, he made it a comprehensive book of life. Yet rarely has a poet of high rank shown such respect for the integrity of his material. Still further, he has planned his Poem not by conventional genre, but has invented a form which is a vital outgrowth of the material before him, an independent and organic plan.

To all this Browning has brought the wealth of a richly endowed personality. The deeper spiritual meaning of the three major characters and of their play upon one another is purely a part of the Poet's vision. They are hopelessly obscured to ordinary sight in the Book. One phase after another of the Poet's deeper life breathes forth in these monologues so that, in the end, we have in the Poem not merely the story retold from the Book, but the wise, sane thought of Browning's full maturity; and it is this, and not the rough ore of fact, that has made the Poem what it is.

Altogether, one can hardly come from a close study of Book and Ring, side by side, without an ever-deepening sense of the might of Browning as a creative artist. The dead weight of the old Book could not bear him down. His fidelity to it could not clip his wings. Its chaotic night of evil could not daunt his moral instincts. Its sheer confusion falls readily into order. Not since Goethe have we had the play of such a giant mind upon a subject which had fascinated it; and it remains, as was said above, the macrocosm of the art and the life of Robert Browning.

One word in conclusion as to this whole matter of poetic originality in its bearing on our subject. Browning is not the less a master that he had such a source-book. The good old law of the literary spoil to the strongest has unfortunately tended to disappear of late in the canons of criticism, and no one can doubt that this has wrought no small injury in our literature. The shibboleth of originality has driven many an artist to practice sheer invention rather than resuscitation in storytelling. Browning's use of the Book, however, brings us back again to the importance of such a background of truth for all good work. The true artist finds ample opportunity for expressing what is great in himself as an artist by using such materials as come to hand. He will be their master and not their servant; they are mere tools of his craft; but the materialless storyteller who depends on sheer fancy is little better prepared for his artistic future than the carpenter who is unprovided with tools and must depend on hands and sticks and stones. Shakespeare was doubtless the greater Shakespeare for all the plays, poems, novels, and histories which are gathered in Hazlitt's *Shakespeare Library*; Dante was the greater Dante for his mastery of the whole medieval tradition of Hell, Purgatory, and Paradise; Milton was the more Miltonic for centuries of semi-artistic retellings of the story of the fall of man; Homer was the greater Homer in the richness of the patriotic balladry which had arisen around the Trojan War; and Browning rose to his masterpiece in art by seizing firmly the Book which "the Hand" had thrust into his own as a call to his greatest achievement in creative imagination.

1980-1981

Corpus of Topical Notes.

The following topical notes present in intelligible order the confused fact and the intricate cross-referencing of Book and Poem, and they are usually explanatory of an initial text quotation from *The Ring and the Book*. The line-numbering and text of the poem are conformed to the author's edition published by Smith, Elder & Co. Page references to the Book are indicated by B, which is followed by Roman numerals if the reference is to the original and by Arabic numerals if the reference is to the translation, the latter being more frequently employed, as the pages of translation permit the insertion of superior figures for return reference. Citation of the secondary source (pp. 207-213) is indicated by P.; of the Casanatense pamphlet (pp. 215-225) by C.; and of the general essay (pp. 227-291) by E. The annotation has been confined to the source problem under discussion, and has not dwelt on the many historical and interpretative questions which should find answer in a more general volume.—C. W. H.

CORPUS OF TOPICAL NOTES.

1—RB., I, 33, 140, 677:

"Old yellow book." The Poet's name for the Book, evidently suggested by the soiled and worm-eaten "crumpled vellum covers."

2—RB., I, 122-31:

These words are a close paraphrase of the actual manuscript title-page of the Book, page I. Position of the entire criminal cause
Of Guido Franceschini, nobleman.
With certain four the cut-throats in his pay,
Tried, all five, and found guilty and put to death
By heading or hanging as befitting ranks.
At Rome on February Twenty Two

Since our salvation Sixteen Ninety Eight:

Wherein it is disputed if, and when,

Husbands may kill adulterous

wives, yet 'scape

The customary forfeit.

Cf. RB., XII, 229.

3—RB., I, 136-9:

in a Latin cramp enough
When the law had her eloquence to launch,
But interfilled with Italian streaks
When testimony stooped to mother-tongue,—

All the formal proceedings of the lawyers and judges were in Latin, as a matter of course a barbarous, late, church Latin, made all the more difficult by the technical nature of the discussion. The testimony was naturally in the vernacular Italian.

4—RB., I, 145-6:

Primary lawyer-pleadings for, against,
The aforesaid Five;

There are six arguments for and five against the Accused in the Book. "Primary" is probably used in the sense of original. Cf. RB., X, 216.

5—RB., I, 146-7:

real summed-up circumstance
Adduced in proof of these on either side,

There are three summaries (*summario*) of evidence, one for and two against the Accused: pamphlets 4, 7, 11. Cf. RB., X, 217; XII, 230.

6—RB., I, 148-9:

Put forth and printed, as the practice was,
At Rome, in the Apostolic Chamber's Type,

All the pamphlets in the Book, save the two anonymous Italian narratives, were printed, probably in very few copies, by the Court for use in its procedure and bear the imprint: Romae, Typis Rev. Cam. Apost. 1698. (*Reverendae Cameræ Apostolicæ*.) Browning translates lit-

erally. This papal press was an official and not a mercantile press.

7—RB., I, 150-2:

And so submitted to the eye o' the Court
Presided over by His Reverence
Rome's Governor and Criminal Judge,—

The arguments are addressed "*Illustrissime et Reverendissime Domine*" and on the file titles they are spoken of as by "*Illustrissimo et Reverendissimo Domino, Urbis Gubernatore in Criminalibus*." The governor at this time was Monsignor Pallavicino. The Criminal Court, however, was presided over by Vice-Governor Venturini, who had also presided over the *processus fuge* (Notes 269, 270), and who later issued the final decree in vindication of the good name of Pompilia (Pamphlet 18). He was possibly assisted by a board of Judges (B., 193, *Illustriss. Congregationis*), but the usual custom in the criminal law of that day was to try before a single judge. Browning, without any authority in the Book, speaks of three Judges (RB., VI, 8), and likewise without authority includes Judge Tommati (RB., I, 1052; VI, 34, 133; VIII, 219, 263), who had tried the first civil suit of Pietro for the recovery of the dowry (Note 262). Cf. Note 365.

8—RB., I, 689-90:

Doubled in two, the crease upon them yet,
For more commodity of carriage,

Soiled streaks on many pages of the Book were evidently caused by the folding of the separate pamphlets, for the purpose of carrying them in the pocket.

9—RB., I, 691-4:

And these are letters, veritable sheets
That brought posthaste the news to Florence, writ
At Rome the day Count Guido died, we find,
To stay the craving of a client there,

These three letters (B., 190-1), written at Rome on the day of Guido's execution, are addressed to Sig. Francesco Cencini at Florence. The first of these is reproduced by the Poet, RB., XII, 239-88 (Note 450); the other two are not at all in correspondence with the other letters of Bk. XII, but facts from them are used here and there through the poem (Notes 428, 429, 431, 448-9, 451). Cf. RB., I, 257-9.

10—RB., I, 85:

"Small-quarto size." The Book is $7\frac{1}{2}$ by 10 by 1 inch, printed in small-quarto.

11—RB., I, 119:

Print three-fifths, written supplement the rest.

There are in fact only about 10 pages of manuscript cut out of 260.

12—RB., I, 694-5:

To stay the craving of a client there,
Who bound the same and so produced my book.

RB., XII, 225, 231:

To this Cencini's care I owe the Book.

* * * * *

Discreetly in my Book he bound them all,

Browning's conjecture that Cencini collected and bound the Book is evidently based on the fact that the letters were addressed to him (Note 9); this is the reasonable supposition as to the collectorship. Note the words of the third letter (B., 191). "I inclose the Fisc's argument, except a single response, which I will send to you as soon as I can lay hands on it, that your Excellency may have the entire case." This accounts for Cencini's having most of the pamphlets of the Book.

13—RB., I, 110-1:

from written title-page

To written index,

The written title-page, see page I, is followed immediately in the Book by the *Indice*, or Table of Contents, pages III and IV. Such manuscript additions are frequently made out by the modern lawyer in completing a case for his professional library.

14—RB., VII, 6-7:

Francesca Camilla Vittoria Angela
Pomilia Compartini

Such is her name as given in the baptismal record (B., 127). The full text of this entry of Pomilia's birth in the records of San Lorenzo in Lucina under date of July 23, 1680, is as follows:

Ego Basilius Risiu Chi Curatus baptizavi infantem natam die 17 ex D. Pietro Compartini Romana quondam Francisi Florentini et ex D. Violanta Romana nata filia quondam Hiacinti Conjugi, degentibus in hac Parrocchia. Impositione fuit Francisco Carilli Victoria Angelae Pomiliae. Padrini fuerunt Recensulus Dominus Johannes Baptiste Barberius quondam Ludovicus Romanus, deg. in Parrocch. S. Francisci et D. Barbara Cardilli de Fabris deg. in hac Parrocchia.

Cf. RB., II, 55; IV, 213-4.

15—RB., VII, 1-2:

I am just seventeen years and five months old.
And, if I live one day more, three full weeks;

Browning evidently calculated this accurately counting from Pomilia's birthday, July 17, 1680 (B., 127), to her deathday, January 6, 1698. Cf. RB., II, 60; III, 457-8; and Notes 350, 351.

16—RB., III, 63:

A loverlier face is not in Rome

The testimony in the Book as to Pomilia's beauty is found (B., 148): "A woman in the flower of her age and, as I have heard, of no small reputation for beauty"; (B., 184): "especially if the wife is beautiful"; and (B., 197): "although it may be very difficult for a beautiful woman to preserve the decorum of her honor." No specific information beyond the subsequent note is given. Cf. RB., VI, 1997-8.

17—RB., III, 67:

Black this and black the other !

RB., XI, 1349:

The long black hair

There is a hint of Pomilia's dark complexion in one of the forged love-letters (B., 81), "that you are darker than I." Cf. RB., II, 275-6.

18—

Pomilia's affidavit, made in Rome, Monday, May 13, 1697, twelve days after her arrest at Castelnuovo, was a part of the *Processus fugae* (Note 269), or criminal process against herself and Caponsacchi for flight and adultery. It is found in the summaries of both sides, but in greater fulness in that of the Defense (B., 69-73). The marginal comments in the latter version (which are stressed by Mrs. Orr, Handbook, p. 88 as indications of something questionable in the real Pomilia's character) are, of course, the prejudiced comments of the lawyers for Guido and are worthless as evidence of guilt in Pomilia. Browning found in this affidavit much information of importance in the story; but it is in no sense a prototype of the monologue of Pomilia in the Poem, nor is it uttered at the same time nor under the same circumstances.

19—

The letter of Pomilia written from the prison of Castelnuovo, May 3, two days after the arrest, is said (B., 143) to have been "found among her private correspondence after her death." It is also referred to (B., 144).

20—RB., VII, 29-30:

He is a boy and Gaetano by name—
Gaetano, for a reason

P. 211: "After that Pomilia bore a son, whom she named Gaetano, after the saint to whom she made her vows." This is the only authority for the child's name, which is so often repeated in the poem. Cf. RB., I, 405; VI, 1389; VII, 100-105, 276; IX, 1371; XII, 688, 781.

21—RB., VII, 1223-59:

The wonderful account of the birth of the brooding mother-sense in Pomilia is Browning's own invention, and he returns to it repeatedly. Cf. RB., III, 112x-4; 1527-38; VI, 762-8; 1374-6; VII, 1439-40; X, 1073-81.

22—RB., VII, 1762-3:

My babe was not, nor is, nor yet shall be
Count Guido Franceschini's child at all—

Pomilia seems to turn here to the thought of the immaculate conception by the Virgin Mother as the explanation of her own child's birth. At line 1692 she says: "I felt like Mary." Cf. also lines 91-2. The Fisc makes cynical reference to this possibility: RB., IX, 1552-66. Caponsacchi speaks of her repeatedly as Madonna. Cf. p. 281.

23—RB., VII, 58:

The month—there wants of it two weeks this day!

The child was sent away (line 46) when two days old—that is, December 20. (Cf. Note 299.) Pomilia is speaking January 6 (Note 350); hence the accuracy of her word, as in her mother yearning she counts the days that still separate her from her babe.

24—RB, VII, 10.

When they insert my death,

The death record in the parish register of San Lorenzo in Lucina (see illustration, p. 280) reads: "Signora Francesca Pompilia Comparini, in Rome, at the age of seventeen and a half, the daughter of former Signor Pietro Comparini, of Rome, wife of Signor Guido Franceschini of Arezzo in Tuscany, died in the Communion of the Holy Mother Church in the house where she lived on Strada Paolina; she received all the Sacred Sacraments and was buried in this, our Church." Cf. Note 351.

25—RB, VII, 32:

"Curate Ottoboni!" Browning finds the name (B., 127). Ottobonus had not baptized her; he merely made the sworn transcript of the baptismal record used as evidence in the trial.

26—RB, VI, 290:

"Giuseppe Maria Caponsacchi." The full name of Caponsacchi is given in its Latin form (B., xcix or 83). Cf. RB, VII, 941. The Caponsacchi family were of noble rank.

Our arms * * *

The shield quartered with white and red.

Giuseppe Maria Caponsacchi, born March 26, 1673 (Griffin), was invested Canon November 26, 1693, and resigned of his own accord May 15, 1702. (Records of the Pieve of Arezzo.) The family is now all but extinct, but still preserves a vague rumor that some priestly forbear had run off with a woman.

27—RB, VI, 346-8:

I' the Pieve * * *

* * * * *

Sub-deacon, Canon.

Caponsacchi (B., 75) says: "I am a Canon of the Pieve of Santa Maria of Arezzo, and am merely a subdeacon." At line 975, he speaks of "the pillared front o' the Pieve,—My church." This is one of the oldest and most impressive of the churches in Arezzo—its famous "pillared front" being well known.

28—RB, VII, 1323:

Our Caponsacchi, he's your true Saint George

The fact that Conti suggested Caponsacchi as traveling companion is given (B., 174): "he suggested that there was no better person than Canon Giuseppe Caponsacchi, his friend and intimate, whose spirit had stood every test." Cf. B., 60; P., 211; and Note 145.

Vasari's fine St. George slaying the dragon is the altar-piece of the church of Conti and Caponsacchi, Santa Maria della Pieve of Arezzo. This may have suggested the St. George strain in Caponsacchi's character. Cf. E., 286-9, and RB., I, 585; VI, 1771, 7; IX, 602.

29—RB, VIII, 1193:

"Pollent in potency." Arcangeli (B., xvii) speaks of Caponsacchi as *viribus pollens*. The full statement is as follows (B., 15): "Because the lover was of powerful strength, not at all timid, and all too prompt for resisting, since in

the word of one of the witnesses in the prosecution for flight he was called cutthroat." Cf. B., 110, 150.

30—RB, VII, 911:

"The rich dark-brown hides?" Browning has a hint of Caponsacchi's complexion in one of the forged love-letters (B., 81).

31—RB, VIII, 1194:

"*Amasius;*" or paramour. Guido's lawyers continually mention Caponsacchi thus.

32—

There is little in the Book to suggest Browning's presentation of the worldly, irresponsible youth of Caponsacchi. Pompilia speaks (B., 70) of his stopping in front of their house to talk with certain young hussies. The poet may have read into the word *donnicivole* some of the opprobrium of our word flirt or even chippy, but no such sinister meaning is necessarily implied.

Tommaseo, *Dizionario dei Sinonimi*, § 1413:

"*Donnicivole, donna di bassa condizione, debole di spirto, con de pregiudizii. Donnicivole può intendersi della plebe, ma non dispregevole.*" Cf. RB, II, 806.

33—RB, VI, 429:

"Light-skirts." The term was possibly suggested by "*la Cantarina*" in one of the forged love-letters (B., xciii or 78).

34—

The important affidavit and cross-examination of Caponsacchi (B., 73-6) is not dated, but it was probably made about the same time as that of Pompilia (May 13, 1697), and was part of the criminal trial against himself, the *Processus fuge*. It is manly and straightforward, and bears out Browning's interpretation of the young priest's heroic qualities, though it makes no suggestion of a personal affection for the woman-victim he had rescued. It is in no way the prototype of the monologue in the poem, and was uttered at a different time and under other circumstances.

35—

Canon Conti, so frequently mentioned in both Book and Poem as the friend of Caponsacchi, was brother of Count Aldobrandini (Griffin), who had married Guido's sister (B., 70); he was accordingly spoken of as a relative and a frequenter of the Franceschini home (B., 74, 92, 144). Conti had been invested Canon of the Pieve August 14, 1692. (Records of the Pieve.) He was in company with Caponsacchi on the evening of the comfit-throwing (Note 131) and Guido subsequently became jealous of him also (B., 70). He was fully informed of Pompilia's sufferings, and to him she turned for relief (Note 145). As he felt it improper for himself to move in the matter, he advised Pompilia to seek the aid of his friend Caponsacchi and he united his urgency to hers. He is accordingly called (B. 177) "the mediator in that flight." The fact that he was not subsequently included in the Tuscan trial of Pompilia and Guillichini for the runaway probably indicates that he had

refrained from overt act in the matter, or that he had died before the suit was instituted. He is also mentioned (B., 80) in the forged love-letters. He was probably related to the Jacopo Conti who swears (B., 42) to the ill-treatment suffered by Pompilia. Cf. B., 60, 62, 144, 159, 196; also RB., II, 928-41.

36—RB., VI, 2032:

Conti is dead, poisoned a month ago:

(B., 177): "It is public talk and report throughout Arezzo that he died a month ago under similar suspicious circumstances." The records of the Pieve give his death as occurring January, 1698—that is, subsequent to the murder of the Comparini. The word could hardly have reached Caponsacchi by the time of his supposed speech.

37—

Guido Franceschini, "a nobleman of Arezzo" (B., 10, and P., 209), of an old but impoverished family, appears in the Book in as unfavorable a light as in the Poem. He was evidently forced early to seek his fortune at Rome. Browning, however, creates outright for us a conception of his early ambition and purpose and of his later unsuccess in the battle of life.

38—RB., V, 144-5:

* * * not first in rank
But second, * * *

Evidently drawn from (B., 171): "it is untrue that his family enjoyed the highest rank of nobility in the City but * * * is of only secondary rank." Palazzo Franceschini, formerly in Via dei Cenci, is no longer in existence. The family was of low origin, came "da un sensale," and grew to great power, no one knows how, and during the 15th century were gonfaloniers of Arezzo. The family became extinct not long after Guido's death.

39—RB., II, 288-9:

* * * since many years,
Was friend and follower of a cardinal;

This fact is evidently drawn from P., 209: "Guido Franceschini, a nobleman of Arezzo had stayed for some time here in Rome, in the service of a person of some eminence." The Casanatense pamphlet (P., 217) says that Guido became Secretary of the Embassy for Cardinal Nerli. François Nerli, born in Florence, July 13, 1636, was son of a banker. He took orders and was raised to the Cardinalate in 1673. For a while he was Archbishop of Florence, but as he was not able to please either the Grand Duke or the people, he retired to Assisi, where he passed the remainder of his days in an agreeable retreat. He was versed in all knowledge and always considered it an honor to be the friend of the learned. He died in Rome in 1708. (Moreri, *Grande Dictionnaire*, VII, 970.) He was possibly the one to whom Caponsacchi refers somewhat scornfully (RB., VI, 1254-65). The full detail of the service given by Guido (RB., V, 292-397) is supplied entirely by the Poet. Cf. RB., II, 154-6; III, 256-7; IV, 400-15; V, 336-9, 1795-6.

40—RB., IV, 55:

"Her Eminence." Evidently a waggish translation of *sua Eminentia* (B., cxxiv).

41—RB., IV, 417:

And not a penny in purse to show for it,—

This ironic comment of *Tertium Quid* is evidently based on (B., 169): "Out of service of a Cardinal, without a soldo." Cf. C., 217.

42—RB., V, 269-70:

Close to the Church, though clean out of it, I assumed
Three or four orders of no consequence,

The Book contains no information as to this fact, but the letters (B., ccxxxv-ix) tell of the staying of Guido's sentence for a few days on the ground of his clerical privilege (clericato). He was secretary of Cardinal Nerli (C., 217). Cf. RB., I, 255; X, 445-8; XI, 45-6, 52.

43—RB., II, 304:

"Thirty years." Browning seems to borrow this time from the *trent' anni nella medesima Citta* (B., 122), which is said of Abate Paolo, and not of Guido. Browning uses it in connection with the latter at RB., IV, 392. Cf. RB., V, 292; X, 825.

44—RB., V, 1428:

"Fifty years." According to P., 213, Guido was fifty at the time of his execution, and he was therefore forty-six at the time the marriage took place. The baptismal records of Arezzo, however, show that he was born January 24, 1657. It runs as follows: Gennaio 24, 1657. Guido di Tommaso di Girolamo Franceschini e di Beatrice di Guido Romano. Cf. RB., I, 784; IV, 409, 719; XI, 1844.

45—RB., I, 783-4:

Lean, pallid, low of stature yet robust,
Fifty years old,

RB., IV, 718-9:

Little, long-nosed, bush-bearded, lantern-jawed,
Forty-six years old,

RB., VII, 396:

Hook-nosed and yellow in a bush of beard,

All of these descriptions of Guido's personal appearance are drawn from the statement at P., 213: "Franceschini was low of stature, thin and pallid, with a prominent nose, black hair and a heavy beard, and was fifty years of age." Browning also had in his possession the rough pen sketch of Guido found at page 275. This was probably made only a few days before Guido's execution. It was sent to the Poet by a stranger, who found it in a bundle of drawings, etc., which he bought at a sale in England. The Poet has probably stepped beyond dramatic propriety in the above words of Pompilia, which are repeated at RB., VII, 443. This is but one of many manifestations of Browning's grudge against the meanness of Guido, which will hardly let the Poet be fair to him. Cf. also RB., XII, 192-6.

46—RB., X, 543-5:

All is the lust for money: to get gold,—
Why, lie, rob, if it must be, murder! Make
Body and soul wring gold out,

This assertion of the inherent greed of Guido is made all through the reply to the Anonymous Writer (pamphlet 15), where almost every motive of Guido is traced ultimately to this. B., 168, *dannato interesse*; 169, *stimolato dell' interesse*; 171, *la sua avidità*; 171, *d'ingannar per farsi ricco*; 173, *dall' interesse deluso*; 175, *oggetto dell' interesse*; 177, *la scandalosa e detestabile cupidigia & avidità*. Bottini in his final argument also repeats this charge frequently: B., 139, *dotti cui praecepit maritus inhibebat*; 142, *eodem urgente pro lucro dotti*; 151, *pro lucro dotti*; 152, *ut dotem lucratur*; 155, *pro lucro dotti*. Cf. RB., III, 702-10.

47—RB., XI, 2161-6:

Those are my arms: we turned the furze a tree
To show more, and the greyhound tied thereto,
Straining to start, means swift and greedy both;
He stands upon a triple mount of gold—

RB., XII, 822-4:

Shield, Azure, on a Triple Mountain, Or,
A Palm-tree, Proper, whereto is tied
A Greyhound Rampant, straining in the slips?

These descriptions of the Franceschini arms are taken from a small water-color drawing, made by the Poet's friend, Barone Kirkup, and now pasted on the front inside cover of the Book. Notice that Browning reads into this coat of arms the greed which he felt was characteristic of the family. Cf. RB., XI, 1932-4.

48—RB., II, 487:

"Count Tommaso's death." Browning found (B., 129) that Guido was the son of Tommaso (or Thomae) Franceschini. Cf. Note 44.

49—RB., V, 188:

Countess Beatrice, whose son I am.

Donna Beatrice's character had evidently excited the Poet's indignation, as his references to her are almost fierce in their denunciation. Cf. RB., I, 571; II, 332-4; 486-91; X, 910-25. The foundation for this is largely in the servant's affidavit (B., 38-42), where the Donna Beatrice appears in a very unenviable light. The Casanese pamphlet (p. 219) calls her a "proud, avaricious woman." Pompilia speaks slightly of her sufferings at the hands of her mother-in-law (B., 69). She bears strong relationship to the "tall pale yellow Duchess," the mother-in-law in *The Flight of the Duchess*.

50—RB., X, 880-1:

This fox-faced horrible priest, this brother-brute
The Abate,

Browning seems to express in these words his loathing of the Abate Franceschini, who was the counsellor and abettor of Guido in every step from the proposal of marriage with Pompilia (B., 169, 170) to the murder itself (Note 304). He is described (B., 116) as "an active and diligent man." The second Anonymous Writer, however, brings out the tricky and mean side of his nature, calling him (B., 176) "the manipulator of all they did, nor was a straw moved without his assistance"; and (B., 182) arraigns

him bitterly. He is mentioned among the poets of Arezzo and was probably a man of fair education and good literary talent. The Casanese pamphlet (pp. 217-8) gives a fuller sketch of his character and career. He rose by his native genius to the secretaryship of Cardinal François Lauria, a distinguished member of the Sacred Congregation. It was this cardinal who signed the marriage agreement (B., 88). At the death of Cardinal Lauria, November 30, 1693, he rose to the lucrative and honorable post of secretary of the Order of St. John of Malta, but was forced to resign (C., 221) a few months before the murder because of the ill fame of himself and his brother Guido. Cf. RB., I, 553; II, 292; III, 251-3, 412-4; IV, 391-3.

51—RB., X, 897-900:

The boy of the brood, the young Girolamo
Priest, Canon, and what more? nor wolf nor fox,
But hybrid, neither craft nor violence
Wholly, part violence part craft:

Here we probably have the Poet's opinion of the Canon Girolamo Franceschini, who appears in no enviable light in the Book. It is evident (B., 10) he was accused of having tried to poison Pompilia, and the popular pamphleteer (P., 209) says he had rushed upon her murderously with a dagger. This latter, however, was perhaps a mistaken version of his attack on Violante (B., 40). The servant's affidavit gives several instances of his abuse of the Comparini. Cf. RB., I, 553; II, 491; IV, 396-9; X, 452.

52—RB., V, 640-1:

the satyr-love
Of whom but my own brother, the young priest,

This accusation against the Canon Girolamo (which is referred to RB., II, 498-501, 1292; VI, 844-6; VII, 808-14; X, 907) is based solely upon (B., 44): "That the Canon, my brother-in-law, had solicited me dishonorably, a thing that had never been thought of by him." This is a part of Guido's forged letter.

53—RB., III, 51:

"Monna Baldi." Probably suggested by the name Monna Baldi Albergotti (B., 38).

54—RB., VI, 521-2:

Count Guido's kind of maid—
Most of us have two functions in his house.

Maria Margherita de Contentis, who brought the first forged letter to Caponsacchi (B., 73), testified during the *Processus fuga* to the passage of love-letters and to clandestine meetings between Pompilia and Caponsacchi, but her evidence was rejected on the ground that she was a harlot (Note 171). She is probably the witness referred to in B., 117. Cf. B., 62, 93, 143, 146.

55—RB., II, Half Rome:

This speaker, who typifies half of the popular opinion of Rome concerning the murder trial—namely that in favor of Guido—was probably suggested by the Italian pamphlet entitled *Notizie di fatto*, etc., pamphlet 10 of the Book. Its author was evidently well acquainted not merely

with all the evidence of the murder case and of the *Processus fugae*, but also with the technical points of the law in the case. He tries to be popular in style, but soon lapses into professional pleading. The pamphlet is mentioned only once in the legal arguments of the Book, namely, during Bottini's long closing argument (B., 152). This would indicate that it was composed late in the trial, probably not earlier than February 10. Its reference to Conti's death as a month ago (Note 36) agrees with this. It was composed to stir public sentiment in behalf of the accused assassins. Certain stylistic mannerisms, and the points and illustrations offered lead to the belief that Arcangeli himself composed it. To-day such material would be put in the columns of our large dailies, but in 1698 the pamphlet was still one of the most effective means for leading public opinion.

Half Rome of the Poem is more popular in style and is almost colloquial in tone, but deals with the facts of the case from the same standpoint of prejudice in favor of Guido. It commences with a long account of the earlier condition of the Compartini (Notes 63, 65, 67, 70), lays stress upon their subsequent financial difficulties (Notes 71-3), emphasizes the craft of the Compartini, particularly of Violante, in advancing the marriage (Notes 74, 77), in making Guido their guardian (Note 90), blames them for the domestic quarrels which afterward arose in Arezzo (Note 95), censures Pompilia for her conduct after the departure of her parents, etc. Browning has taken this standpoint of the pamphlet and has vivified it by placing it on the lips of one of the sensation-lovers of the day, who is talking on the gossip-loving level of Rome. He has even caught from the pamphlet the hint as to the inherent prejudice of the speaker in favor of husbands at the expense of wives. Cf. the following note.

56—RB., II, 1537-9:

All which is the worse for Guido, but, be frank—
The better for you and me and all the world,
Husbands of wives, especially in Rome.

This passage, which crowns the jealous husband's narrative, was probably suggested by the closing words of the first Italian narrative (B., 126): "Franceschini should be punished mildly to diminish the force of immorality and impudence. For the woman is not without adherents, who triumph throughout all Rome in a coterie of treachery, both in public and in private. This is for the oppression and derision against husbands who have regard for their reputation. And they give the title of pedantry to that circumspection which one ought to practice for the preservation of his own honor."

57—RB., I, 873-4:

Born of a certain spectacle shot in
By the Church Lorenzo opposite.

The surroundings of the speaker in *Half Rome*, the curious and excited throng pressing into San Lorenzo to see the dead bodies so fully described by *Half Rome* (lines 17-101), was suggested by

the popular pamphlet (P., 213): "In the meantime there were exposed in San Lorenzo in Lucina the bodies of the assassinated Compartini, * * * The surprise of the people at seeing the said bodies was great, because of the atrocity of the deed." Cf. RB., VIII, 1332.

58—RB., II, 18:

"This morn." January 3, 1698, the day after the murder. Cf. RB., I, 846.

59—*The Other Half Rome*:

The Other Half Rome was probably suggested by the second Italian Pamphlet of the Book, No. 15. The latter says (B., 183): "The intention of the author of the present response is no other than to make clear the falsity of the suppositions against the honor of the poor wife and against the Compartini." It was evidently written in refutation of pamphlet 10, which it meets with irony and scorn as well as with argument. It likewise insists (as does *Other Half Rome*) on the comfortable circumstances of the Compartini (Note 67), on the scheming of the Franceschini to bring about the marriage (Notes 75, 76, 79, 80, 84, 85), on the craft and cunning of Abate Paolo in particular (Note 50), on Guido as their Padrone (Note 90), on the cruel treatment suffered by the Compartini in Arezzo (Notes 95, 98), on the repeated instances of the greed of the Franceschini (Note 46), and on the justification of Pompilia in the various steps of her flight.

The Poet has invented both the situation and individuality of the speaker without suggestion from the Book. He might have found an excellent situation for one speaker in the scene of the popular turmoil on the reentry of the captured assassins on the evening following the murder (P., 212). But the speaker's sympathy for Pompilia probably necessitated a somewhat finer nature than would have been found in one troping after the popular sensation of the day.

60—RB., I, 904:

"Three days ago." *The Other Half Rome* is supposed to speak on January 4, "three days" after the murder, according to the Roman way of counting, January 2-4. Lines 36 and 1640 are in agreement with this date, but line 867 can not be reconciled therewith and should probably read "since three days."

61—RB., I, 903:

motley merchandizing multitude.

RB., IV, 10-11:

* * * this rabble's-brabble of bolts and fools
Who make up reasonless unreasoning Rome.

These sneers may have been suggested by the second pamphleteer's scornful words (B., 168) as to "the dull heads of the crowd" and (B., 168) "to excite compassion, no less in foolish persons."

62—The Pope:

The historic Pope, Innocent XII, had only a slight connection with the Franceschini tragedy. Abate Paolo had made ineffective appeals to him (Notes 280, 281). And when the death sentence against Guido had been stayed tem-

porarily on the grounds of clericate (Note 42), the Pope overruled this delay. The second Anonymous Pamphleteer (B., 183) also speaks of him as "most zealous of justice." He was not otherwise in touch with the case as recorded in the Book. The Casanatense pamphlet, however (p. 223), states that when Guido's crime and arrest were reported to the Pope, "He gave commands that, without delay and with all rigor, trial should be brought, this being a case which, by reason of the consequences that might arise from it, should be examined into with very special attention."

Rev. John Chadwick in reporting a conversation with Browning said: "Of the old Pope of the poem, too, he spoke with real affection," and he goes on to tell of the medallion of the good Pope which was presented to the Poet by a friend, and which he prized so highly. The Dublin Review criticized the Poet for presenting an utterly impossible Pope. There is no doubt that this liberal thought and unchurchmanlike attitude is unhistoric. The Poet was evidently well acquainted with many admirable qualities of this historic Pope, and saw an opportunity to use him as the mouthpiece of his own attitude toward the tragedy. No Pope ever spoke even to himself the theology and church polity of this monologue. The Pope indeed is merely Browning's typical wise old man—a brother of Rabbi Ben Ezra and the Apostle John. (Cf. E., 270-1.)

63—RB., II, 193-4:

These wretched Comparini were once gay
And galliard, of the modest middle class:

The fullest statement of the social and financial condition of the Comparini is given in the pamphlet of the Anonymous Writer (B., 116). This pamphlet and the retort to it dwell on this earliest history of the case and on the trickery of both parties. In this respect they are strikingly like *Half Rome* and the *Other Half Rome*. In the murder case itself this earlier portion of the story is of little importance. Cf. RB., III, 115-26; IV, 70-94.

64—RB., II, 195:

Born in this quarter seventy years ago

RB., I, 798:

Aged, they, seventy each,

At P., 213, the Comparini are called septuagenarians, but as Violante was only 48 at the time of Pompilia's birth (B., 172) she was now 65. Cf. RB., III, 192-3; IV, 75.

65—

Violante Comparini, ne Peruzzi, is spoken of (B., 116) as a "very shrewd woman and of great loquacity," and her own acts and the various indications of character throughout the Book seem to agree with this. P., 209, says: "She was driven by the ambition of establishing her daughter in the home of persons of good birth." Browning has filled out this mere outline of character with interesting fullness till we find her the overbearing, cunning, headstrong woman of the Poem.

The Casanatense pamphlet adds other lines to her disagreeable portrait. But even her character is softened in the words of Pompilia. (RB., VII, 269-343.) Cf. RB., III, 133-4.

66—RB., II, 203-4:

In Via Vittoria, the aspectable street
Where he lived mainly;

The sole reference in the Book to this home in Via Vittoria is made at B., 127, the address of Pompilia's letter in the third Summary. In the Poem this street-name is repeatedly used. For Strada Paolina where they lived at the time of the murder, cf. Note 292, also RB., II, 475; III, 74; 364; IV, 455; 476; V, 1333; XI, 969, 1154.

67—RB., II, 200-1:

wealthy is the word,

Since Pietro was possessed of house and land—

B., 116, states that Pietro's property amounted to from 10,000 to 12,000 scudi invested in well-situated houses, and bonds (B., 170). Cf. P., 209.

68—RB., II, 211:

He owned some usufruct, had money's use

Most of Pietro's property seems to have been entailed, he enjoying only the income in part (Note 70), the rest going to a trust fund which an heir would secure for him. This usufruct is spoken of at B., 50, 116; P., 210. Cf. RB., III, 159.

69—RB., IV, 135:

"*Fidei commissum.*" A sum held in trust. Cf. B., 50, 116.

70—RB., IV, 76-7:

money's so much;

And also with a remnant,—so much more

Probably suggested by the account (B., 116): "The property of Pietro Comparini did not amount to more than the sum of 10,000 or 12,000 scudi, subject to a revolutionary interest, coupled likewise with the obligation to compound a good percentage of the income * * * there being a bar against his use of the capital and of a part of the income."

71—RB., IV, 96:

Indulge so their dear selves.

Possibly suggested by the first Anonymous Writer (B., 116): "He was too indulgent to his stomach and was given to laziness."

72—RB., II, 265:

And poverty had reached him in her rounds.

RB., IV, 97:

Pietro finds himself in debt

Suggested by (B., 116): "He was brought down to a state poor and miserable enough," and (B., 194): "his creditors * * * were pressing him hard."

73—RB., IV, 109-10:

He asks and straight obtains

The customary largess,

Suggested by (B., 116): "And after making a statement of his property, received from the Papal Palace secret alms each month."

74—RB., II, 268:

And who must but Violante cast about,

The Anonymous Author (B., 116) speaks thus of Pietro, but Browning probably felt this act was more in accord with Violante's aggressive, scheming character. Cf. RB., III, 132-3, 170-1; IV, 130-45.

75—

Other Half Rome, on the other hand, follows the answering pamphlet which makes the Franceschini brothers set the marriage negotiations under way (B., 169).

76—RB., X, 532-3:

He purposes this marriage, I remark,
On no one motive that should prompt thereto—

This strong protest of the Pope against the marriage of convenience is Browning's, and is not characteristic of the age and society of which it is written. The historic Pope would not have uttered it. It is not the bargain in the marriage, but the cheating in the bargain, which is criticized by the second Anonymous Writer (B., 169-71).

77—RB., II, 344:

What constituted him so choice a catch,

Note that the reply to this question, which presents the selfish purpose of the Comparini, is drawn from the first Anonymous Author (B., 116): "This bargain was advantageous to Pietro and his wife in freeing them from the straits in which they found themselves." Cf. RB., II, 413-5.

78—RB., IV, 440-2.

To the woman-dealer in periukes, a wench
I and some others settled in the shop
A Place Colonna:

Evidently drawn from a reference (P., 209) to a "hair-dresser near the Piazza Colonna," and (B., 169) "in the shop of certain women hair-dressers." It was this woman who brought them the news of the eligibility of the match with Pompilia. The Casanatense pamphlet (C., 217-8) dwells more fully on Guido's craft in conciliating and bribing this go-between. According to it Guido's bribe was 200 scudi. Cf. RB., IV, 447-50.

79—RB., IV, 461-74:

I'll to the husband * * *
* * * * *
And wait on Madam Violante."

RB., III, 260:
to Violante somehow caught alone.

B., 169, and P., 209, lay particular stress on the cunning of the Franceschini in approaching Violante, rather than Pietro, the former likening it to the guile of the serpent in Paradise, who attacked Eve rather than Adam. Cf. C., 218.

80—RB., III, 270-5:

He disserted on that Tuscan house,
Those Franceschini,—very old they were—
Not rich however—

B., 170: "Nor was it difficult for him to ascertain the woman, because he knew how to impress her very well with the thought of the grandeur of his country, of his first-rate nobility of birth, and of the great income from his patrimony." Cf. RB., IV, 477-88; P., 209, and C., 218.

81—RB., IV, 489:

There's Pietro to convince: leave that to me!

B., 170: "The credulous, but deceived woman so cajoled her husband that she at last induced him to sign the marriage agreement." Cf. P., 209, and C., 218.

82—RB., V, 494-5:

I falsified and fabricated, wrote
Myself down roughly richer than I prove,

In presenting his case before Pietro, Guido made a written statement of properties which yielded him an income of 1,700 scudi, though it was later proved that he did not own a dollar's worth of income-bearing property. Guido claimed he did this at the instigation of Violante. This trick of Guido is frequently spoken of in the Book (B., 57, 170, 171, and P., 209). When taken to task for it by his brother, Guido declared he had done so at the instigation of Violante (B., 117).

83—RB., IV, 490-3:

then
Did Pietro make demand and get response
That in the Countship was a truth, but in
The counting up of the Count's cash, a lie.

B., 170: "Of whom he [Pietro] had had few good reports, and these were far different from the pretended riches, and vaunted nobility." P., 209: "The resources of the Franceschini * * * were quite different from what they had been represented." Cf. RB., III, 396-40x.

84—RB., III, 428-9:

Home again * * *
Went Pietro to announce a change
RB., IV, 495:
Declined the honour.

B., 170: "Pietro absolutely refused to go on with the effectuation of the marriage." Cf. P., 209, and C., 218.

85—RB., III, 448-60:

[Violante] * * * holding a girl veiled too,
Stood, one dim end of a December day,
In Saint Lorenzo on the altar-step * * * * *
* * * * * wed
Guido clandestinely, irrevocably
To his Pompilia

This and the other accounts of Violante's marrying her daughter to Guido without the knowledge of Pietro are based on (B., 170-1): "At any rate, the said Guido joined the said Violante, whom he had imbued with his flatteries and endearments, spurning any further consent of Pietro by keeping him in ignorance of it. And without knowledge of the latter, Guido contracted the marriage with the said Francesca Pompilia in the face of the Church." And P., 209: "The mother of Francesca, not seeing any chance to give her daughter to Franceschini, had her secretly married during December, 1693, in San Lorenzo in Lucina." December is no doubt wrong, as Cardinal Lauria, who died on November 30, had had a hand in the marriage (Note 88 and C., 218). The marriage is not recorded in the register of San Lorenzo in Lucina during the last quarter of 1693. Cf. RB., II, 59-70, 359-78; IV, 495-8; VII, 376-473.

86—Omitted intentionally.

87—RB, II, 380-9:

Once the clandestine marriage over thus,

* * * * *

Pietro could play vast indignation off,

B., 171: "When, after a few days, Pietro found out that the marriage had taken place, though he reproved the deed vigorously," etc. In the Poem, Pietro's indignation at the secret marriage is variously told at RB, III, 469-83; IV, 499-504; VII, 489-571. Cf. P., 209, and C., 218.

88—RB, III, 470-6:

Violante sobbed the sobs and prayed the prayers

* * * * *

Till Pietro had to clear his brow apace

* * * * *

* * * could flesh withstand the impurled one,

The very Cardinal,

B., 171: "Yet because what is done can not be undone, and by means of the cajoleries of Violante his wife and the interposition of another cardinal [Cardinal Lauria, cf. p. 218 and Note 50], whom the Abate, Guido's brother, served, the poor old fellow was constrained to drink the cup of his bitterness."

Note Pompilia's explanation of his acquiescence, VII, 523-7. Cf. RB, II, 74-8, 156; IV, 1610-1; V, 1797-1801; VII, 545-50.

89—RB, VII, 472-3:

When I saw nothing more, the next three weeks,
Of Guido—

Pompilia (B., 69) says: "After I was engaged to him he stayed here in Rome for two months without consummating the marriage." Cf. line 736.

90—RB, II, 404-5:

They, for their part, turned over first of all
Their fortune in its rags and rotteness

An interesting illustration of the correspondence of *Half Rome* and the *Other Half Rome* with the two Italian Pamphlets of the Book (cf. Notes 55, 59) is seen in the treatment of the turning over of Pietro's property to his son-in-law. *Half Rome's* account (RB, II, 403-17) is drawn from B., 116 (cf. 59, 194); while that of the *Other Half Rome* is drawn from B., 170. Cf. also P., 209, and C., 218.

91—RB, III, 496-7:

Guido gained forthwith

Dowry, his wife's right;

A dowry of 2,600 scudi was given with Pompilia. Cf. B., 116, 170, and P., 209.

92—RB, III, 509-11:

As for the usufruct—

The interest now, the principal soon,

Would Guido please to wait, at Pietro's death:

B., 116: "With the added hope of future succession to the rest of his property." B., 170: "And at the death of the said Compartini for all their possessions."

93—RB, III, 512-16:

Till when, he must support the couple's charge,

* * * * *

Bread-bountiful in Arezzo

The fact that Guido undertook the obligation of feeding, housing, and serving the Compartini is spoken of several times in the Book (B., 58, 69, 86, 164, 170).

94—RB, II, 429:

They went to Arezzo,—Pietro and his spouse,

The fact that the Compartini accompanied their daughter and son-in-law back to Arezzo is told by Pompilia (B., 69) and elsewhere (B., 10, 50, 117, 171, and P., 209). Cf. also RB, I, 565-8; VI, 792; VII, 559-64.

95—RB, II, 462-525; III, 521-39; IV, 550-72;
V, 607-47:

All of these accounts of the family quarrels between the Compartini and Franceschini are suggested by various passages in the Book. The most specific information on the point is found in the long affidavit of the woman servant (B., 38-42). Both the Governor and the Bishop in their letters refer to the troubles and blame the Compartini (B., 68-9 and 76). The Anonymous Writer (B., 117) ascribes the trouble to the "bitter tongue of Pietro" and the "haughtiness of Violante." Whereas, Bottini (B., 57) says: "Notorious indeed are the altercations which, on account of the parsimony of the home, straightway arose," etc. Cf. C., 219: "The mother of Guido, a proud, avaricious woman, who governed the household despotically, took to stinting it even in the necessary food. This moved the Compartini to complaints, to which they first responded with insults and then with threats." Cf. B., 50, 171, and P., 209.

96—RB, II, 497:

where Violante laid down law.

The letter of the Governor of Arezzo asserts (B., 68) that "Signora Violante * * * presumed to domineer over the house and to keep the keys of everything." And Arcangeli practically echoes this charge (B., 87).

97—RB, II, 507-10:

And Pietro, * * * the wine-house bench—

B., 68: "Signor Pietro had given over the company and conversation of the best people of the city, and had struck up acquaintance with the most vulgar. And with them he began to frequent daily all the taverns there. This was little for the good name of the Franceschini." Cf. also B., 87.

98—RB, II, 504:

Four months' probation of this purgatory.

Pompilia (B., 69) says that her parents remained in Arezzo four months, while B., 57, 171, speak of a few months. These probably were the winter months of 1693-4, as they went there in December (P., 209) and were in Arezzo during both January (B., 38) and February (B., 39, 58). Cf. RB, III, 522; IV, 568; V, 617; IX, 276-8; XI, 1195.

99—RB, IV, 569-70:

To beg him to grant, from what was once their wealth,
Just so much as would help them back to Rome

B., 118, states that "they were provided with money for the journey, and in Rome with furniture to put in order the house they had left." But P., 210, says that they had to "beg it of Franceschini, who scarcely gave them the necessary expenses of the journey." Cf. C., 219.

100—RB, III, 529-36:

The starved, stripped, beaten brace of stupid dupes
 * * * * * * * *
 * * * carried their wrongs
 To Rome.—

The second Anonymous Writer (B., 171) says: "Such were the miseries and abuses the Comparini had to suffer in vicuals and in harsh treatment that they were obliged to return to Rome after a few months." Cf. also B., 10, 50, 69, 100, 210, and RB., I, 569-77; II, 519-25; V, 764-5; VI, 794; XI, 1199-1201.

101—RB, II, 534-7:

Once in Rome.
 * * * * * * *
 Her first act to inaugurate return
 Was, she got pricked in conscience:

RB., III, 180:
 Made in the first remorse:

RB., IV, 575:
 * * * feeling conscience prick,

B., 172: "Urged on by remorse of conscience."

102—RB, II, 537-8:

"Jubilee gave her the hint." B., 172: "At the time of Jubilee." Cf. P., 210, and RB., III, 180, 555-65.

103—RB, II, 549-51:

She confessed
 Pompilia was a fable not a fact:
 She never bore a child in her whole life.

P., 210: "Violante Comparini revealed in confession that Francesca Pompilia * * * was not their daughter." Cf. B., 172. See also the elaborate and interesting account of Violante's confession, RB., III, 566-82, and IV, 576. Cf. C., 219.

104—RB, III, 583-98:

Replied the throne—"Ere God forgive
 * * * * *
 Tell him, and bear the anger which is just!"

B., 172: She "was constrained by her confessors * * * to reveal it to Pietro," etc. Cf. P., 210.

105—RB, II, 558:

The babe had been a find i' the fifth-heap,

There is no room for doubt that Pompilia was of vile parentage. The Anonymous Writer (B., 118) speaks of her as being "of most vile parentage." Her mother is spoken of as "meretrix" (B., 97, 99); "viliissima lotrix" (B., 10); "viliissima et in honesta mulier" (B., 17); "a poor widow and stranger" (P., 210). The Casanatense pamphlet gives a somewhat different account (C., 219). The Poet repeats the fact in one after another of the monologues, and he makes their attitude toward the fact something of a revelation of the speakers' own characters. They range from the brutal hatred of Guido to the tender, loving comment of Pompilia upon

her own mother. Cf. RB., II, 549-83; III, 208, 549-668; IV, 149-91, 575-80, 611-2; V, 88-9, 768-74; VII, 131-2, 139-45, 864-94; XI, 1217.

106—RB, V, 90:

Her mother's birthright-license

RB., VII, 863:

—Adding, it all came of my mother's life

Arcangeli accuses Pompilia of being like her mother in evil life (B., 18): "Nor was it difficult to persuade that girl to do what she was prone to by inborn instinct, and by the example of her mother." Cf. B., 99.

107—RB, II, 580:

Partly to cheat the rightful heirs,

B., 118, gives Violante's motive in the fraud as her desire to keep "her husband's creditors from their rights" and P., 210, "this had been adopted to bring it about that the reversionary interest would fall to their house, and hence to make good the many debts of her husband." Cf. RB., III, 194-6; IV, 218-9. Browning's various versions of the cheat and the motive which lay behind it are given, RB., II, 58, 219-47; III, 179-229; IV, 131-210; VII, 270-300; VIII, 875-8.

108—RB, II, 597:

"The bitter bit," possibly suggested by the ironic comment on the trick at B., cxxii: *ars deludit arte.* Cf. RB., V, 1360-1.

109—RB, II, 656-67:

they noised abroad
 Not merely the main scandal of her birth,
 But slanders written, printed, published wide,

The Book makes several references to the fact that Guido had suffered thus at the hands of Pietro. B., 144, speaks of "pamphlets about the domestic scantiness and the base treatment suffered." Cf. also B., 27, 118, 154, 164. Probably the servant's affidavit (B., 38-42) was thus slanderingly circulated throughout Rome. Cf. RB., II, 671-6; IV, 640-5; V, 765-7; XI, 1225.

110—

This affidavit of Angelica was evidently secured by Pietro to aid him in his suit, 1694, to recover the dowry paid to Guido and to annul the dowry contract (Notes 260-2). It was probably a part of the injurious publications (Note 109) circulated by Pietro throughout Rome to the detriment of Guido. Browning uses its facts only slightly (Notes 117-9), but from it gained almost all of his detailed knowledge of the penury and parsimony of the Franceschini and of the sufferings of the Comparini while staying in Arezzo. The affidavit is referred to by the lawyers of the Book (B., 58, 86, 117).

111—

The attestations (B., 42-3) concerning the ill-treatment which Pompilia had suffered in the home of her husband were evidently secured as a part of her defense in the *Processus fugae*. It is interesting to note among the witnesses the names of a Conti (not the Canon) and of Confessor Romano, to whom Pompilia had had recourse in vain.

112—RB, II, 684-6:

* * * * *
her husband's brother the Abate there,

This letter of Pompilia to Abate Franceschini is twice given in full in the Book (B., lv and lxxxvii). During the trial for murder, it was subject to frequent discussions by the lawyers (B., 10, 18, 59, 87, 142, 154, 195; and P., 210). It seems also to have been formerly presented as evidence in the *Processus fugae* (B., 44), but had been "rightly rejected by the judges" (B., 142). We quite agree with Lamparelli (B., 195) "it is certain that if the letter be read attentively, it will be absolutely impossible to assert that she had written it with a calm mind." The letter is so grossly impossible from such a young girl, that it must have been of Guido's drafting. And if so, inasmuch as it forecasts the flight of Pompilia with a lover, and other later developments of the case, we are led to infer that the whole of this later trouble was the deliberate plot of Guido, as charged in RB., III, 712-37. Cf. Note 121; also RB., III, 738-71; IV, 769-86; V, 834-43; VIII, 158-72; IX, 809-21.

113—RB, II, 721:

Word for word, such a letter did she write,

This refers to the contents of lines 689-718, which are indeed a fairly close adaptation of the original (B., 44). The letter is repeated again in this way by *Tertium Quid*, IV, 778-84. Cf. RB., II, 689-718.

114—RB, III, 751-3:

This letter, traced in pencil-characters,
Guido as easily got re-traced in ink
By his wife's pen.

Evidently based on Pompilia's explanation of the letter as given (B., 72): "My husband wrote the letter with a pencil, and then made me trace it with a pen and ink it." Cf. RB., III, 1315-6; IV, 770-2; V, 842-3; VIII, 161-4; IX, 816-21.

115—RB, VII, 746:

Go this night to my chamber, not your own!

Cf. B., liv: *Fece strepito grande, perche non voleva andare a dormire col Signor Guido, suo Consorto;* also cf. B., 90: *Renuebat jacere cum viro.*

116—RB, IX, 1338-41:

* * * * *
who had been harassed and abused

For non-production of the promised fruit
Of marriage?

In her affidavit (B., 69) Pompilia says: "As I did not become pregnant, my husband and my mother-in-law Beatrice began to turn against me because I had no children." Cf. P., 210.

117—PB, V, 70-4:

—How she can dress and dish up—lordly dish
Fit for a duke; lamb's head and purloinace—
With her proud hands, feast household so a week?
No word o' the wine rejoicing God and man
The less when three-parts water?

The servant in her affidavit (B., 40, 41) speaks of the lamb and lamb's head cooked and divided by Donna Beatrice, and of the diluted wine for the table.

118—RB, IV, 360:

Creeps out a serving-man on Saturdays

B., 40: "When he did not buy the lamb on Saturday * * * Signor Guido gave money to Joseph, the house-boy," etc.

119—RB, V, 1388:

"The coarse bread." B., 41 says: "The bread was as black as ink, and heavy, and ill-seasoned."

120—RB, V, 1361-3:

and truly divers scenes
Of the Arezzo palace, tickle rib
And tease eye till the tears come, so we laugh;

Probably refers to the making public of the servant's testimony (B., 38-42). Cf. Note 109.

121—RB, VI, 1795-8:

That he, from the beginning pricked at heart
By some lust, letch of hate against his wife,
Plotted to plague her into overt sin
And shame, would slay Pompilia body and soul,

This accusation that Guido plotted to drive Pompilia to Caponsacchi's arms, while it is not referred to in the Book, seems not improbable in the light of certain facts given there. The letter which he forced Pompilia to write (Note 112) forecasts many of the grossly improbable crimes with which he taxed his child-wife three years later. The love-letters (Note 232) are almost impossible of explanation save as part of some such deliberate scheme. This is quite in accord with the ascertained character of Guido, who was crafty and cruel. Cf. Note 150; also RB., III, 721-37, 776-87, 1356-9; IV, 663-98, 749-51; VII, 695-9; X, 603-13; and E., 278.

122—RB, IV, 788-90:

All sort of torture was piled, pain on pain,
On either side Pompilia's path of life,
Bult round about and over against by fear,

Pompilia tells (B., 70) of the cruelties of her husband, attributing them to her sterility and his jealousy of her. Elsewhere in the Book general reference is made to the ill-treatment suffered by the wife. Cf. Notes 128, 129, 132-4.

123—RB, V, 896-902:

It was in the house from the window, at the church
From the hassock * * *
That still Pompilia needs must find herself
Launching her looks forth, letting looks reply
As arrows to a challenge;

This charge of general flirtation is told by Pompilia herself (B., 70), where she asserts that it was without foundation. Arcangeli reiterates the charge (B., 91): "The wretched Accused complained bitterly that she was not content merely with a single lover at Arezzo, but that she had been defiled by many suitors." Cf. RB., VII, 677-80; IX, 298-301; and P., 210.

124—RB, II, 809-10:

Pompilia chose to cloister up her charms
Just in a chamber that overlooked the street,

Possibly suggested by (B., 70): "My husband began to be jealous of me and forbade me to show my face at the window."

125—RB, II, 861:

Or wife and Caponsacchi may fare the worse!

Both Pompilia and Caponsacchi mention the threats of Guido (B, 70, 74).

126—RB, VII, 684-5:

I tried to soothe him by abjuring walk,
Window, church, theatre, for good and all,

B, 70: "To remove that occasion of jealousy I never showed my face save when it was absolutely necessary."

127—RB, II, 833-4:

Your lady loves her own room, sticks to it,
Locks herself in hours, you say yourself.

Cf. Pompilia's words (B, 70): "I retired to my room whenever he came to our house, that I might not have to take even more trouble." Also cf. B, 173, 180.

128—RB, V, 938-46:

This account of Guido's jealousy of Caponsacchi is founded on Pompilia's story of the jealousy (B, 70): "Because the Canon Caponsacchi with other young men of the place used to pass before our house * * * my husband began to fume with anger at me." Cf. RB, II, 805-7, 835; and Bottini's contemptible assertion of shrewd intrigue (RB, IX, 335-75).

129—RB, VII, 693-4:

Cease from so much as even pass the street
Whereon our house looked,

Pompilia (B, 70) says: "And begged him not to pass that way, that he might relieve me from all the distresses," etc.

130—RB, VI, 653:

Tell him he owns the palace, not the street

This reply of Caponsacchi to the request given in the preceding note is suggested by B, 70: "He replied that * * * Guido could not stop his passing along the street."

131—RB, VI, 394-433:

Found myself at the theatre one night

This incident of the confit-throwing at the theatre is told by Pompilia (B, 70): "While we were in a great crowd at the play one evening, Canon Conti, the brother of the husband of my sister-in-law, threw some confetti. My husband, who was near me, took offense at it—not against Conti, but against Caponsacchi, who was sitting beside the said Conti." We have here an excellent example of Browning's master power in raising the fact of the Book to a higher emotional and moral plane. Cf. RB, II, 801; IV, 944; VII, 950-90.

132—RB, VII, 1029:

O Christ, what hinders that I kill her quick?

Pompilia tells of these words (B, 71): "As soon as we had returned home, he pointed a pistol at my breast, saying: 'O Christ! What hinders me from laying you out here? Let Caponsacchi look to it well if you do not wish me to do so, and to kill you.'" Cf. B, 60.

133—RB, IV, 1069-70:

The silent *acqueta*, stilling at command—

RB, V, 948-9:
Showing hair-powder * * *
For poison

There are several accusations that Guido threatened to poison his wife (B, 173): "The said Guido had made a mixture of poison, with which he threatened he would take her life without the uproar attendant on the use of arms; and thus he would be the surer of his crime going unpunished." Cf. B, 71, 144, 173, 174, 177. B, 10, also speaks of an accusation against the brother, Girolamo, that he too had offered her poison (Note 51). Cf. RB, V, 1737; VII, 1250; IX, 381.

134—RB, V, 949-50:

making believe
At desperate doings with a bauble-sword,

The threat of poison and sword are coupled (B, 144): "The wife was continually afraid that he would kill her, either with the sword or by means of poison." Cf. B, 173, and RB, VII, 1250; IX, 380, 1149.

135—RB, II, 874:

She bade the Governor do governance,

Pompilia thus driven to desperation, evidently turned for help to the Governor (*Commissario*) of the city (B, 42, 58, 143, 173, 195, 210). This is referred to even more frequently in the poem, RB, III, 967-9; IV, 799; V, 1825; VI, 822-30; VII, 1265; IX, 262-3, 993; X, 971-81; XI, 1331—an interesting illustration of the possibilities of varying a given fact.

136—RB, VI, 2051:

"Vicenzo Marzi-Medici." He so signs himself in his letter (B, 69), and the Bishop of Arezzo (B, 77) speaks of "Signor Senator Marzi-Medici, who presides over the laic government of this town."

137—RB, III, 997-8:

* * * promised the pair,
Wholesome chastisement * * *

This threat of the Governor in reply to the recourse to him is found in his own letter (B, 69): "I threatened them with prison and punishment unless they behaved themselves." Cf. RB, X, 977-8, and Note 147.

138—

This letter of the Governor of Arezzo (B, lxxxi-ii) to Abate Franceschini under date of August 2, 1694, was evidently written as part of the quarrel and lawsuit between the Franceschini and Compartini. It is ample evidence of the fact that Pompilia could have no hope of help in such a man, after her first recourse to him (Note 135). It is cited by the lawyers in their arguments (B, 87, 88, 117, 143).

139—RB, II, 875:

Cried out on the Archbishop.

Pompilia's appeal to the Bishop of Arezzo is still more frequently mentioned. She says

(B., 71): "At the beginning of these troubles, I went twice to Monsignor the Bishop, because he might have remedied it in some way; but this did no good because of his relations with the house of my husband." The Governor of Arezzo, in his letter under date of August 2, 1694, says (B., 68): "Of much greater scandal were the many flights and petitions made by Guido's wife, their daughter, to Monsignor, the Bishop." The lawyers interpret this fact according to their pre-possessions: Arcangeli (B., 89) speaks of the "eager and indecent recourse without cause to the most reverend Bishop" and offers evidence to show that she was unwilling to live with her mother-in-law and brother-in-law. Bottini, on the other hand (B., 143), accuses the Bishop and Governor of having carelessly rejected her recourse to them. Cf. B., 42, 43, 58, 76, 87, 143, 173, 195, and P., 210. C., 220, gives some additional information concerning the fact.

This fact of her recourse to the Bishop is also much repeated in the Poem (RB., III, 970-89; IV, 801-6; V, 1823-31; VI, 822-30; VII, 748-859, 1264; IX, 262-3; 994; X, 986-93, 1454-70; XI, 1332).

140—RB., II, 876:

Three successive times.

RB., IV, 80x:

Flung herself thrice

RB., V, 1823:

not once, but so long as patience served—

Pompilia in the preceding note speaks of twice making such appeal (B., 76); the Bishop himself says she made "some recourse" to him. He speaks of this as having happened many times (B., 44). I find no authority for the definite thrice of the Poet. Cf. RB., III, 1003.

141—RB., II, 879:

"On the public steps thereto." This detail seems to be suggested by (B., 43): "She took her station at the head of the stairs and stayed there," etc.

142—RB., III, 1011:

"Coached her." Probably suggested by the Governor's words (B., 68): "When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage." And the Bishop himself (B., 77) says: "I had her taken home in my carriage twice." Cf. P., 210.

143—

The letter of the Bishop of Arezzo (B., xci-ii or 76-7), like that of the Governor, was in all probability written to be used by the Franceschini in defending themselves from the accusations and the lawsuit of the Comparini in the year 1694. Evidently there was little help for Pompilia in flight to such a man. It is used in legal argument (B., 88, 143).

144—RB., III, 1015-7:

* * * as a last resource, betook herself to
* * * * * * * * *

A simple friar o' the city,

Pompilia makes the sole reference in the Book to this fact (B., 71): "I went about a month later to confession to an Augustinian Father, whom they call Romano. I told him all my distresses, imploring him to write to my father in my name, * * * and to tell him that I was desperate, and must part from my husband and go to him in Rome. But I had no response." This fact is repeated in the Pamphlet (P., 210). Probably the Priest Romano, who (B., 42) signs the affidavit concerning Pompilia's distress in her husband's home, is the one referred to by Pompilia. Browning's variations upon this fact are interesting. Cf. RB., IV, 807-41; VI, 831-56; VII, 1282-1302; X, 1471-85.

145—RB., VI, 2026-7:

She only tried me when some others failed—

Began with Conti,

This fact is brought out by the second Anonymous Author (B., 173): "She intrusted herself to the Canon Conti, who is closely related to the Franceschini, and declared to him her miseries, her perils, and her just fears (although they were not unknown to him) * * * He was touched with living compassion and moved to free her therefrom by pity for her grievous state." This fact is repeated by the Pamphleteer (P., 210). Cf. B., 196; RB., VII, 1309-16, and Note 35.

146—RB., VII, 1304-6-8:

Last, in a desperation I appealed

* * * * * * *

To Guillichini, that's of kin,

* * * * A flying gout

Pompilia, in a letter to her father, states (B., 127) that Guillichini had planned to accompany her, but had been prevented by ill health. His help in arranging the flight is likewise mentioned (B., 62, 63, 159, 196, and RB., II, 933-6; V, 1016; VI, 2028).

147—RB., VII, 1267-71:

'twas he who,—when I gave
A jewel or two, themselves had given me,
Back to my parents,—since they wanted bread,

* * * * * * *

Spoke of the jail for felons.

This was evidently suggested by (B., 87): "He was compelled by the Governor of the City, under fear of imprisonment, to restore certain trinkets and gems of his daughter, which he had taken away." Cf. Note 137.

148—RB., IV, 963-4:

Could no one else be found to serve at need—

No woman

Guido's lawyers raise this very question (B., 92), and retort is made by the other side (B., 144).

149—RB., III, 1040-2:

"At last * * * found Caponsacchi." Pompilia (B., 71) says: "Therefore, not knowing to whom I might turn, * * * I finally resolved to speak to the said Caponsacchi." Cf. RB., III, 1345-8.

150—

The actual communication between Pompilia and Caponsacchi, in letter and in conversation before their flight together, is subject to some

dispute. Each of them makes definite statement of the matter in their respective affidavits. But Guido and his lawyers attempted to show far greater intimacy between them. Arcangeli (B., 94) says: "It is undeniable that the carnal love was reciprocal between them." Guido tried unsuccessfully to establish his claim that the love-letters (cf. Note 232) had been part of this correspondence. He also accused them of clandestine meetings (Note 170). On the face of the facts it does not seem improbable that Guido attempted to drive them together in a criminal intrigue, that he might rid himself of his wife (Note 121), for Guido's first jealousy of Caponsacchi, as told by Pompilia (B., 70), is so utterly unfounded that it may easily have been a part of a deeper plot.

151—RB., II, 780-811:

The occasion of Guido's original jealousy of Caponsacchi is told by Pompilia (B., 70). Cf. RB., VII, 1036-43.

152—RB., II, 805:

And, ever on weighty business, found his steps

Possibly suggested by (B., 70): "And then because the Canon Caponsacchi, with other young men of the place, used to pass before our house."

153—RB., VI, 482:

I told friends—"I shall go to Rome."

Suggested by the real Caponsacchi's words (B., 73): "I had to go to Rome on my own business, and as I told my secret," etc. Cf. RB., VI, 812; VII, 1209-11.

154—RB., VI, 506-7:

In glided a masked muffled mystery,
Laid lightly a letter on the opened book,

B., 73: "Hence a letter, sent to me by Francesco, was brought one day by a certain Maria, then a servant of the Franceschini." At B., 72, Pompilia denies ever having sent a letter to Caponsacchi. Browning explains the difference of assertion (RB., VII, 1105-25). Cf. RB., IV, 1025-6.

155—RB., VI, 485:

"By the mid-March twilight." Browning evidently means to place this incident a few weeks prior to the flight which occurred in latter April.

156—RB., III, 899-909:

That it was not he made the first advance,
* * * * *

Pompilia penned him letters,

This insistence that Pompilia made the first advance is repeated (RB., IV, 967-77; IX, 501). Pompilia herself speaks of having first asked Caponsacchi not to pass along their street (B., 70). Cf. Note 129.

157—RB., VI, 510-19:

This description of the contents of the letter brought by Maria is drawn from contents of the forged love-letters, as will be seen in the subsequent detailed notes. Cf. Caponsacchi's statement as to its nature (B., 74) and his angry rejection of a counter assertion (B., 76).

158—RB., VI, 516-7:

Where the small terrace overhangs a street
Blind and deserted, not the street is front:

Possibly suggested by (B., 81): "Now the street-door is no longer opened, but you might be able to open the back door."

159—RB., VI, 519:

At his villa of Vittiano.

RB., V, 1142:

He's at the villa, now he's back again:

B., 78: "The jealous one is away," and B., 80: "Signor Guido returns Saturday morning." Cf. RB., VI, 591.

160—RB., VI, 528-9:

Then I took a pen and wrote
"No more of this!"

Caponsacchi states his response to the above letter as follows (B., 74): "I answered her that I was unwilling to do anything of that kind, or to expose myself to such a risk." Pompilia (RB., VII, 1121-5) states that a love-letter was delivered to her at this time by Maria, but elsewhere (B., 72) says she had received no letters from Caponsacchi; and Guido's lawyers in their marginal annotation brand this statement as a lie.

161—RB., VII, 1125:

"My idol." Used in one of the forged love-letters (B., 81).

162—RB., VI, 559:

"Myrtilla." The name Mirtillo is found in the letters (B., 77, 82). Cf. RB., VII, 1153; IX, 54x.

163—RB., IX, 54x:

"Amyrillis she." The name is used repeatedly in the forged love-letters (B., 77, 78, 81, 82).

164—RB., VI, 564:

The Baron's daughter or the Advocate's wife,

In the love-letters, jealous reference is made to rival sweethearts (B., 81).

165—RB., VI, 574:

"At the Ave. Come!" One of the love-letters (B., 81, 82): "Come this evening at seven o'clock." Cf. RB., VII, 1377.

166—RB., VI, 587:

Why the man's away!

(B., 82): "Signor Guido is going out of the city, and will be gone several days."

167—RB., VI, 618:

And so the missives followed thick and fast

Caponsacchi says (B., 74): "She continued making the same request to me, by flinging, from time to time from the window, a note."

168—RB., VI, 642:

Will stick at nothing to destroy you.

Caponsacchi in his affidavit (B., 74) says: "He (Guido) would also be avenged on me."

169—RB., VI, 928-31:

So he not only forged the words for her
But words for me, made letters he called mine;
What I sent, he retained, gave these in place,
All by the mistress-messenger!

This is Browning's explanation of the apparently irreconcilable clash of statements as given in the above notes. That is, Guido had stood between his wife and Caponsacchi, forging a correspondence by which he hoped to bring them together. He may have practiced this forgery in making up the packet of pretended love-letters. Such a sinister explanation is by no means the result of a prejudice on the Poet's part, but seems justified by the material he had before him.

170—RB., VI, 1674-5:

And what of the clandestine visits paid,
Nocturnal passage in and out the house

RB., III, 1095:

Whither and whence blindfold he knew the way.

Charges of other meetings—clandestine visits of Caponsacchi to Pompilia—are made by Guido's lawyers (B., 11, 93) and are denied by their opponents (B., 62, 146, 198). Cf. RB., IV, 1028-31; V, 1003-5; IX, 559-61. In the last, Bottini gives as usual his sophistical version and interpretation of the matter.

171—RB., III, 1097-1104:

cites for proof a servant,
* * * * *
A common trull

The testimony of Maria Margherita Contenti is given (B., 93), and was rejected on the ground that she was a harlot (B., 62, 143, 146, 198). Cf. Note 54.

172—RB., VI, 1691-2:

*Sub imputations meretricis
Labores,—which makes accusation null:*

This Latin passage is not found in the Book, but the point of law is made (B., 62, 198). The Poet probably found the words in some old legal authority which he had followed up in one of the numerous citations on the point.

173—RB., V, 56:

Take to the window at a whistle's bid,

This charge is made against Pompilia by Arcangeli (B., 91, 93), and Bottini makes reply (B., 146).

174—RB., IX, 566-8:

who dared maintain
That midnight meetings in a screened alcove
Must argue folly in a matroon—

Bottini carries this sophistry to an even more absurd extreme (B., 149).

175—RB., VII, 1207:

"Now Easter's past," Easter, 1697, fell on April 7, a fact which the Poet had probably ascertained.

176—RB., VII, 1208:

And the Archbishop gets him back to Rome,

The forged letter supposed to be from Caponsacchi (B., 82) speaks of this fact. "Wednesday the Bishop departs with three carriages."

177—RB., VI, 702-4:

"And there at the window stood * * * Pompilia." Caponsacchi (B., 74), speaking of their interview, says: "She being at the window."

178—RB., III, 912-3:

Nor had she ever uttered word to him, nor he
To her till that same evening when they met,

Browning does not use at any point Pompilia's account of her first interview with Caponsacchi (B., 70), as it would have marred the strong emotional tone of Caponsacchi's account of their first meeting (RB., VI, 702-4).

179—RB., III, 916-8:

And she adjured him in the name of God
To * * * bring to pass where, when and how
Escape with him to Rome might be contrived.

The story of their second and more important meeting is told by Pompilia (B., 71). According to this account, Caponsacchi showed considerable reluctance about entering upon the matter. Then follow the significant words (B., 71): "But I implored him * * * and told him it was the duty of a Christian to free from death a poor foreign woman." Browning has given an account of this meeting from the lips of both of them, and to both it was one of the crises of life. Cf. RB., VI, 701-894, and VII, 1404-47.

180—RB., III, 1175-6:

no pretext
For aught except to set Pompilia free.

Caponsacchi's words (B., 74) are: "Accordingly, with this purpose, to free myself from every difficulty and danger, and also to save from death the said Francesca," etc.; and Bottini (B., 61) says it was from mere pity, and her honesty was kept entirely intact. Cf. RB., IV, 996-7.

181—RB., VII, 1459:

Next night there was a cloud came, and not he:

RB., VI, 1065-6:

Why is it you have suffered me to stay
Breaking my heart two days more than was need?

This delay of two days at this critical juncture is told of in the words of Pompilia (B., 71): "But the next day went by and, although I stood at the blinds, he did not give the signal. When the day following had also passed, I spoke to him again as above and complained to him that he had broken the word he had given me." Browning has made this delay of two days take a profound meaning in the life of his hero, a time of rapid growth to the full stature of Christian heroism (RB., VI, 937-1062). But the Poet's Pompilia merely says—forgetting the cruel anxiety of the delay in such peril—

I prayed through the darkness till it broke.

182—RB., VII, 1462:

The plan is rash; the project desperate:

Possibly suggested by (B., 71): "He replied that he did not wish to meddle at all in such an affair, as it would be thought ill of by the whole city"; or by (B., 74): "I answered her that I was unwilling to do anything of the kind, or to expose myself to such a risk." Cf. P., 211.

183—RB., VI, 890:

If I am absent, drop a handkerchief

Pompilia speaks of this signal (B., 71).

184—RB., VI, 1110-1:

This being last Monday in the month but one
And a vigil, since to-morrow is Saint George,

Both Pompilia and Caponsacchi (B., 71 and 74) speak of the flight as beginning the last Sunday night of April (which was April 28), and Caponsacchi says they reached Castelnuovo (B., 74) on the "last evening of the month"—that is, the flight lasted from very early Monday morning, April 29, till the evening of April 30, and they were arrested by Guido the next morning, May 1 (cf. B., 7, and P., 211). The Poet has discarded this date for April 23, St. George's day, in all probability, that he might take advantage of the chance association of his "soldier-saint" with the famous English ideal of Christian knighthood, St. George. Other dates connected with the flight are changed accordingly (cf. Note 28). Cf. RB., II, 889: "One merry April morning"; III, 1065-6, "on a certain April evening, late i' the month."

185—RB., VI, 1078:

"There's new moon this eve." This mere chance remark was evidently verified by Browning, as the supposed date, Sunday, April 22, 1697, was indeed new moon. See the letter of Mr. Barrett Browning (Note 536).

186—RB., VII, 1479-81:

You, whom I loathe, beware you break my sleep
This whole night! Couch beside me like the corpse
I would you were!

Suggested by Pompilia's words (B., 72): "I went to bed with my husband that evening, and when I had assured myself that he was asleep," etc.

187—RB., V, 1022:

"At the seventh hour of night" (B., lxxxix or 74) "alle sett' ore in circa." Cf. also B., 7.

188—RB., V, 1023:

"Later, at daybreak." Pompilia gives the time as "at dawn" (B., 72). Cf. B., 211.

189—RB., V, 1020-3:

But the gates are shut,
In a decent town, to darkness and such deeds;
They climbed the wall—your lady must be lithé—
At the gap, the broken bit . . .—"Torrione, true!"

Evidently based on (B., 7): "As the gates of the City were closed they climbed the wall on the hill of the Torrione, and having reached the Horse Inn outside of San Clemente," etc. Cf. RB., VI, 1080, 1089.

190—RB., V, 1022:

"They climbed the wall." Suggested by (B., 7 and 8): "Climbed the walls of the City."

191—RB., V, 1025:

Clemente, where at the inn, hard by, "the Horse."

B., 7: "And having reached the *osteria del Cavallo* outside of the gate of San Clemente." This inn is now used as a poor tenement house. Cf. B., 74, and RB., VI, 1082-4.

192—RB., V, 1026:

Just outside, a calash in readiness

B., 7: "Awaited with a carriage (*caleesse*) and two horses." P., 211, and RB., II, 945; III, 1087.

193—RB., V, 1028-9:

To gate San Spirito, which o'erlooks the road,
Leads to Perugia,

Caponsacchi says (B., 74): "Turned along outside of the city wall to go to the gate of San Spirito, which is in the direction of Perugia." Cf. B., 7, and RB., VI, 1146-7; II, 956.

194—RB., III, 1128-30:

And so did fly rapidly all night,
All day, all night * * *

And then another day,

Both Pompilia and Caponsacchi (B., 72 and 74) speak of their flight as uninterrupted save for the necessary stops for eating and changing horses. Browning uses this statement (RB., VI, 1211-2):

"Does it detain to eat?"

They stay perforse, change horses,

The flight lasted from 1 a. m. April 29 to 7 p. m. April 30, a journey of 70 miles in 42 hours, including these stops. Cf. RB., III, 828; V, 1044-5; VI, 1153; IX, 720, 1281.

195—RB., VI, 1275:

When we stopped at Foligno it was dark.

Guido makes the unfounded charge (B., 107) that the fugitives slept together at Foligno. Cf. RB., VI, 1455-6; II, 959.

196—RB., II, 893:

And teeth one mud-paste made of poppy-milk;

Baldeschi says (B., 108) that Guido had told him that Pompilia had mixed an opiate with the wine for dinner to put to sleep himself and all the rest. The fact is also mentioned or discussed (B., 10, 22, 93, 119, 146, 198). Browning refers it (RB., II, 905; III, 1204-8; IV, 1176-7; V, 989-91, 1038). Cf. also the next note.

197—RB., IX, 625-35:

And do him service with the potent drug

Apology is made (B., 146 and 199) for Pompilia's use of the sleeping potion on the ground that it was a necessary precaution for her flight under fear of death. Browning substitutes for this sophistry the above grotesque subterfuge on the Fisc's lips.

198—RB., II, 894-5:

"His scrittoire the worse for a rummage" At B., 72, Pompilia speaks of having taken some money from "*un Scriorno*." Cf. B., 119; RB., IV, 1178; V, 993.

199—RB., III, 1073-4:

clothes and a trinket or two,
Belongings of her own in the old day,—

Pompilia (B., 72): "I took some little things of my own, a little box with many trifles inside, and some money, I know not how much there was. These were my own * * *" Cf. B., 75.

200—RB., V, 992:

* * * rifed vesture-chest,

RB., II, 895-6:

jewelry that was, was not,
Some money there had made itself wings too,—

These charges of serious theft were insisted upon by Guido's lawyers: B., 10, 86, 108, 119, and P., 211. At B., 7 and 8, Guido gives a preposterously long list of clothing, jewelry, and money carried away by Pompilia. As a matter of fact the 47 or 48 scudi found on Pompilia at the time of her arrest were later paid back to Abate Franceschini (B., 176, 211). Bottini (RB., IX, 653-8) makes an ironic excuse for this theft.

201—RB., VI, 2043-9:

There are two tales to suit the separate courts,
* * * — he tells you here, we fed
* * * * * but elsewhere
He likes best we should break in, steal, bear off,

Guido's charge against his wife and Caponsacchi before the Roman Courts was flight from home and adultery; while (B., 7-9) the copy of the proceedings in the Tuscan Court, would indicate that in the latter, the theft was much insisted on. Cf. RB., V, 1906-8.

202—RB., II, 954:

Got horse, was fairly started in pursuit

B., 10, "the wretched husband pursued them." Cf. RB., III, 1209; IV, 1118; V, 1039; and B., 50, 119; and C., 221.

203—RB., VI, 1838-9:

In our whole journey did we stop an hour,
Diverge a foot from straight road

Bottini makes this point (B., lxxii or 61, § *Eque ulterius*). Cf. B., 179, 196.

204—RB., VIII, 212-3:

I had thought to own—
Provided with a simple travelling-sword,

Such is Arcangeli's claim (B., 96), and it is refuted by Bottini (B., 150).

205—RB., VI, 1694:

"Borsi, called Venerino." At B., 7, the driver is named in the criminal charge against him in Arezzo as "*Francesco di Gio. Borsi d. Venerino, Garzone d'Agosto.*" At B., 62, he is called "*Franciscus Joannes de Rubris.*" Cf. B., 74, and RB., IX, 686.

206—RB., VI, 1696:

Deposes to your kissings in the coach,

This charge against the fugitive couple is made (B., 11, 94, 107, 119) and denied (B., 62, 63, 147, 179, 199, and P., 211). The Casanatense pamphlet (C., 221) gives a slightly fuller account.

207—RB., VI, 1698:

After some weeks of sharp imprisonment

RB., IX, 689:

After long rotting in imprisonment,

B., 199, gives this reason for his statement: "Influenced by the tedium of his secret prison, he had been compelled to swear so."

208—RB., VI, 1702-3:

"Was dismissed forthwith to liberty." That he was thus dismissed is seen at B., 8 and 9.

209—RB., IX, 698-701:

That what the owl-like eyes * * *
O' the driver, drowsed by driving night and day,
Supposed a vulgar interchange of lips,
This was but innocent jog of head 'gainst head,

This sophistry is first offered by Bottini (B., 147): "Furthermore, there is the possibility to be considered that the jostling together of those sitting in the carriage might have happened from the high speed; and from this fact an overcurious witness might believe that they were kissing each other." This explanation is repeated (B., 179, 199).

210—RB., VI, 1397-1401:

Suddenly I saw
The old tower, and the little white-walled clump
Of buildings and the cypress-tree or two,—
"Already Castelnuovo—Rome!" I cried,
"As good as Rome,"

RB., I, 507-8:

the wayside inn
By Castelnuovo's few mean hut-like homes

Castelnuovo, by the accident of Pompilia's failing strength, thus became the scene of one of the most striking incidents of this dark history. The arrival of the fugitives there is continually referred to (B., 72, 74, 119, 174). The version of Book II, 966-7, is more particularly based on the statement (P., 211): "At Castelnuovo in the Osteria of the Post." The other descriptions were made by the Poet "with his eye on the object," and are accurate.

211—RB., II, 972:

There did they halt at early evening,

Caponsacchi (B., 75) says: "We reached Castelnuovo on Tuesday evening, the last of the said month of April." And B., 94, says that they arrived at about half-past seven in the evening. All other testimony in the Book, save that of Pompilia, agrees with this.

212—

Pompilia, however (B., 73), declares: "I verily arrived at Castelnuovo at the blush of dawn." Hence the Poet makes Pompilia say (RB., III, 1140): "In a red daybreak, when we reached an inn." To this evidently mistaken statement, Guido's lawyers make the marginal comment: "The lie concerning the advent at Castelnuovo." And this is used to break down the value of her testimony (B., 94). The lawyers on the other side meet this attack by subterfuge (B., 149, 200). The Poet invents his own explanation, which, while not corroborated at any point in the Book, is not refuted by the fact of the Book. This is, that Pompilia fainted away in the evening glow, and when rudely awakened in the glow of the next morning, she was ignorant of the lapse of the hours of night. Note that the Poet repeats this important point. Cf. RB., III, 1188-98, and VII, 1580-4.

213—RB., VI, 1410-12:

Out of the coach into the inn bore
The motionless and breathless pure and pale
Pompilia,

This passage was probably suggested by the words of Caponsacchi (B., 75): "Then because Pompilia said that she was suffering some pain and that she did not have the courage to pursue the journey further without rest, she cast herself still clothed upon a bed in the chamber."

Cf. B., 199, and RB., IX, 741, where the mean and vicious nature of Bottini is made to reveal itself in speaking of the same fact. Cf. also RB., III, 1142-9; VII, 915-6.

214—RB., VI, 1418:

"Kept watch all night long." B., 148: "Brief stay in that room * * * should be attributed to his guardianship of Francesca Pompilia." Cf. B., 149, 174, 200: "*ad ipsius custodiam vigilante.*" Cf. also RB., IV, 960; VII, 1574.

215—RB., II, 1116:

The night at the inn—

RB., II, 981:

One couch in one room, and one room for both.

In spite of the denial by Pompilia (B., 73) there can be little doubt that the fugitive couple did spend the night together in a chamber at Castelnuovo. Caponsacchi makes his explanation of the matter (B., 75). Guido asserts that they slept together at Castelnuovo. The lawyers discuss the matter pro and con throughout the Book, usually speaking of it as the *condormitio* (B., 11, 62, 75, 94, 119, 141, 148, 149, 174, 180, 199). Cf. RB., X, 659-64.

216—RB., II, 974:

"Upstairs," etc. Probably suggested by Pompilia's reference to an upstairs chamber (B., 73).

217—RB., II, 999-1000:

flung the cassock far,
Doffed the priest, donned the perfect cavalier.

Caponsacchi's use of laic garb during the flight is referred to (B., 94 and 148, and RB., III, 1259-60; IV, 960, 1156; V, 1050-1; VI, 1120, 1465).

218—RB., IX, 735:

Pompilia needs must acquiesce and swoon,

Caponsacchi gives their reason for stopping thus so near their journey's end (B., 75): "Then because Francesca said that she was suffering some pain, and that she did not have the courage to pursue the journey further without rest." And Bottini (B., 149) says: "To refresh her strength, which had been exhausted by the swiftness of journey they had made." Cf. also B., 199, and RB., III, 1187-8, 1231-2; VI, 1408.

219—RB., II, 975-6:

Since in the court-yard stood the Canon's self
Urging the drowsy stable-grooms to haste

RB., VI, 1427-9:

I stood
I' the courtyard, roused the sleepy grooms. "Have out
* * * * *
Carriage and horse, give haste, take gold!" said I.

Cf. B., 149: "The Canon was keeping guard over her and preparing for the continuance of the journey; and so, when the husband arrived, he was attending to this by ordering that the carriage be made ready." And at B., 180, we read: "When Franceschini arrived at the said place he found Caponsacchi urging that the horses be harnessed for continuing the journey." Cf. B., 174, and RB., III, 1197-1201; V, 1052-62.

220—RB., III, 1262-5:

There was no prompt suppression of the man
As he said calmly "I have saved your wife
From death;"

RB., X, 696:

the steadfast eye and quiet word
O' the Canon of the Pieve!

The actual words of Caponsacchi at this meeting as reported (B., 196) have undoubtedly suggested these passages, and they are still convincing evidence of the sterling and manly honor of the real Caponsacchi: "I am a gallant man, and what I have done, I have done to free your wife from the peril of death." Cf. also B., 174; and RB., II, 1010; IV, 1159, 1192-3; V, 1119.

221—RB., II, 1008:

"A wicked-looking sword at side." The Procurator of the Poor (B., 96) implies that the fugitives were provided with fire-arms as well as other weapons, but Bottini (B., 151) claims that Caponsacchi had only a sword, while elsewhere (B., 175, 177) only "*un piccolo spadino*" is acknowledged. Cf. also B., 119; and RB., III, 1260; IV, 1156; VI, 1122, 1466; VIII, 201-5.

222—RB., II, 1021:

So, Guido called, in aid and witness both,

Both the Book and *The Ring and the Book* refer repeatedly to the failure of Guido to take summary vengeance here and to his turning to the law to avenge himself. Guido gives his own defense (B., 107). But his lawyers have hard task to meet the sneers of the Prosecution at this failure of spirit. Cf. RB., II, 1506-24; III, 1268-70; IV, 1120-1212; V, 1068-1117; VI, 1461-71; VIII, 983-95, 1185-7; IX, 1133; X, 697-8; and B., 15, 51, 53, 65, 96, 109, 119, 151, 160, 162, 175, 177.

223—RB., IV, 1126-9:

And never let him * * * plead, * * * honour's wound!

Exactly this point is made by Bottini in his argument against Guido (B., 151).

224—RB., VI, 1511-2:

Detect

Guilt on her face when it meets mine, then judge

Possibly suggested by the rhetorical question (B., 174): "When his wife saw him, did she, timid as she was, shrink back?"

225—RB., II, 1022:

"The Public Force." The police who overtook Guido the night after the murder are called *La Forza* (P., 212). Cf. RB., IV, 1395; VI, 1463.

226—RB., II, 1022:

"The Commissary." The Governor of Arezzo is called *Il Commissario* (B., 42), but P., 211, speaks of "*il Governatore di quel luogo*"; B., 75 and 119, speak of "*la Corte*." Cf. also RB., VI, 1462, and B., 51, 175.

227—RB., II, 1031:

Sprang to her husband's side, caught at the sword

RB., V, 1123-4:

Nay, an alacrity to put to proof
At my own throat my own sword,

RB., VI, 1544-6:

She sprang at the sword that hung beside him, seized,
Drew, brandished it, the sunrise burned for joy
O' the blade,

This incident, which is perhaps the most dramatic of the whole story, is interpreted in various ways in the Book. We read (B, 16): "Whether because of her hatred for her husband, or on account of her anger at the imprisonment of her lover, she drew a sword against her husband in the very presence of the officers who were about to arrest her. And to prevent her from going further, one of the bystanders had to snatch it from her hands." Cf. also B, 96, 110, 119, 150.

Browning's interpretations through the various speakers of the Poem are full of interest—the fierce admiration of Caponsacchi, the grave and earnest approval of the Pope, Pompilia's own linking of the act to her half-conscious mother-sense and to the voice of God, and the Fisc's insincere sophistries should be carefully compared. We have here a good example of Browning's art in adapting one of the acknowledged facts of the story to the various personalities of his speakers. Cf. RB., III, 1161-7, 1290; VII, 1594-1641; IX, 889-925; X, 699-700, 1081-3.

228—RB., II, 1040:

but her tongue continued free:

RB., V, 1120:

She, with a voluntary of curse,

RB., VII, 1591-2:

I did for once see right, do right, give tongue

The adequate protest:

The Poet invents words for the situation at RB., III, 1295-9; and VI, 1528-32. At P, 211, we read: "The young woman was not at all terrified at the sight of her husband, but on the contrary she mustered her courage and reproved him for all the cruelties practiced upon her." Cf. B., 174, 175.

229—RB., II, 1044:

"The *sbirri*." Cf. B., 119: "*catturate da i suoi sbirri*." B., 177: "*farli arrestare da sbirri*."

230—RB., V, 1133:

We searched the chamber where they passed the night,

RB., VI, 1555-9:

I begin my search meanwhile

Probably based on Caponsacchi's words (B., 75): "Although in the prison of Castelnovo, where I was placed, diligent search was made both by the authorities and the husband," etc. Cf. RB., II, 1068-9.

231—RB., II, 1071-4:

Found— * * *

All the love-letters

RB., VI, 1668-9:

the documents were found

At the ion on your departure?

Cf. also III, 1308-11; IV, 1033-42; V, 1132-7, 1874-7. In the Book these letters are variously asserted to have been found in the closet, "*in Latrina*" (B., 61, 197) and in the prison (B., 76, 88, 143).

232—RB., VI, 1650-4:

Then your clerk produced

Papers,

RB., VII, 175-9:

Nay, I heard read out in the public Court
Before the judge, in presence of my friends,
Letters

These love-letters were presented as evidence in the adultery trial, *Processus fugae*, and were reintroduced now in the murder trial and were published in extracts in the summary of evidence for the defense (B., 77-83). They play a very important part in the legal arguments, as will be seen by the following citations (B., 11, 61, 88, 89, 119, 168, 174, 177, 178, 197, and P, 211). The internal evidence against the genuineness of these letters is overwhelming. It is quite inconceivable that their highly conventionalized, pseudo-literary affectation could have been written by an illiterate young girl.

233—RB., II, 1145-7:

Tis forgery * * * the husband's work.

Very naturally and justifiably do the lawyers for the Fisc charge them to the forgery of Franceschini himself. (B., 197): "They might have been framed by the husband." They seem to be a part of his whole cunning, ignoble plot against his wife. Browning has repeated this charge of forgery over and over again (RB., III, 949-52, 1313, 1360-61; IV, 1047-59; V, 1151, 1203-6; VI, 1665, 1801-2; IX, 468, 1150; X, 650).

234—

In the trial for adultery, *Processus fugae*, both Pompilia and Caponsacchi were questioned as regards these letters, and their replies are found at B., 72, 76.

235—RB., II, 1133-8:

Seeing I have no hand, nor write at all.

* * * * * * * * * * *

* * * she read no more than wrote,

Guido's lawyers brand these statements as lies, and endeavor to prove that she did know how to write (B., 87, 120). Cf. also RB., III, 908-11; VII, 1489-90; IX, 837; and Note 248.

236—

Guido's account of the contents of the love-letters (RB., V, 1141-9) is evidently given by the Poet in close accord with the letters set forth in the evidence, as will be seen by the subsequent notes.

237—RB., V, 1142:

He's at the villa, now he's back again;

Cf. B., 78: "The Jealous one is away"; and B., 80: "Guido returns Saturday morning."

238—RB., V, 1146-9:

"Of all things, find what wine." This is not an exact quotation from any of the letters, but they contain similar passages concerning the dropping of the sleeping potion into the wine (B., 81, 82).

239—RB., V, 1147:

"Sir Jealousy." *Sir Geloso* is frequently referred to in the letters (B., 77, 78, 81, 82).

240—RB., V, 1148:

"Red wine." Cf. B., 78, "*vino rosso*" and B., 81, "*è rosso per hora.*"

241—RB., V, 1148-9:

Because a sleeping-potion, dust
Dropped into white, discolors wine

Cf. B., 93: "For in seeking an opportunity to mingle an opiate * * * was inquiring what colored wine they were drinking in the home, lest the color of it, when altered by the drug mixed therewith, might betray their plots."

242—

On the replies of Caponsacchi as to the letters (B., 75-6) the Poet has based his conception of Caponsacchi's reply (RB., VI, 1650-73).

243—RB., VI, 1655-9:

—How was it that a wife, young, innocent,
* * * wrote this page?—
She wrote it when the Holy Father wrote
The bestiality that posts thro' Rome
Put in her mouth by Pasquin.

The question and reply here are suggested by (B., 76): "I marvel that the Fisc pretends that before the flight several other love-letters had been sent me by Signora Francesca; for she was a modest young woman and such actions would be out of keeping with her station and her birth. And, therefore, I declare the abovesaid pretense is false and without foundation." On the above passage was also based RB., II, 1162-4:

Much he repents him if * * *
He coupled her with the first flimsy word

244—RB., VI, 1661-5:

"There's your hand!"
This precious piece of verse, I really judge,
Is meant to copy my own character,
A clumsy mimic; and this other prose,
Not so much even;

These words are evidently suggested by Caponsacchi's reply concerning the letters submitted to him for identification (B., 76): "This letter was not written by me, though the handwriting (*carattere*) of the same has some resemblance to my own. * * * This other letter * * * was not at all written by me and is not in my handwriting. Furthermore it has not the slightest resemblance to my handwriting." Cf. RB., II, 1131; III, 1312-3.

245—RB., II, 1148-9:

he confesses, the ingenuous friend,
That certain missives, letters of a sort,

Caponsacchi makes such acknowledgment in his affidavit (B., 75). Cf. RB., III, 927-30; IV, 1050-2.

246—RB., II, 1159-60:

he flung,
Her letters for the flame

RB., IV, 1053:
I burn because I read.

Probably suggested by Caponsacchi's reply (B., 75): "The letters sent to me, as above, by the said Francesca, were burned by me in Arezzo." There is a similar statement in one of the forged love-letters (B., 79): "I gave them to the flames." Cf. RB., II, 1140; III, 960.

247—RB., IX, 445-8:

"Or the letters * * * Allow them hers." Bottini (B., 61) makes just such an acknowledgment, and then offers excuse: "or she could have made pretense of this to win over the Canon." Cf. B., 145, 146, 148, 178, 197. Cf. lines 473-4.

248—RB., IX, 448-9, 60:

—for though she could not write,
In early days of Eve-like innocence

* * * * *

May well have learned, though late, to play the scribe:

B., 143: "She could have acquired this skill afterwards because of desperation which sharpened her wits." Cf. Note 235.

249—RB., IX, 461-3:

You thought my letters could be none of mine,

* * * * *

But now I have the skill, and write, you see!

B., 127: "I sent you word of them on purpose, but you did not believe the letters sent you were in my own hand. I declare that I finished learning how to write in Arezzo."

250—RB., IX, 476-7:

"my life,

Not an hour's purchase," as the letter runs,—

The words are adopted from Pompilia's real letter (B., 127): "My life was not worth an hour"—(*la mia vita era a hore*).

251—RB., III, 957:

They never reached her eye a word from him:

Cf. Pompilia's words (B., 72): "The said Caponsacchi before the said affair did not send me any letter, because I do not know how to read manuscript," etc.

252—RB., IX, 538-45:

To such permitted motive, then, refer

All those professions, else were hard explain,
Of hope, fear, jealousy, and the rest of love!

This excuse for the ardent tone and expression of the love-letters is made by Bottini (B., 146).

253—RB., II, 1135:

What if the friend did pen now verse now prose,

RB., VI, 1662:

This precious piece of verse,

There is no verse in the letters as given in the Book, but the letters which were supposed to have been written by Pompilia speak of certain verses, "*ottave*" (B., 78, 79, 80), and Bottini speaks of "*in honesta carmina*" (B., 145). Cf. also RB., V, 1140, 1365; and VII, 1152.

254—RB., VI, 1585-7:

they bore me off,

They bore her off, to separate cells o' the same

Ignoble prison, and, separate, thence to Rome.

The fugitive couple were evidently carried first to a prison in Castelnuovo, from which Pompilia's appealing letter to Pietro was written two days later, May 3 (B., 127). But Pompilia's affidavit is dated Rome, May 13 (B., 45).

255—RB., III, 1325:

The captured parties were conveyed to Rome;

B., 175: "They were conducted as prisoners to the Prisons of the Most Illustrious Governor of

Rome." P., 211: "They were taken to Rome and placed in the New Prisons." Cf. RB., II, 1060, 1083; IV, 1121; V, 1175-6; VI, 1587-91.

256—RB., III, 1229-33:

Guido kept out of sight and safe at home:
The Abate, brother Paolo, helped most
* * * * *

* * * pleaded, Guido's representative

At B., 120, we read: "Guido returned to his own country, leaving the conducting of the affair to the Abate, his brother." And P., 211: "To go back to his own country, leaving the care of his case in the hands of his brother, the Abate." Cf. RB., II, 1297-1300; IV, 1303-4.

257—RB., II, 1239-59:

The various accounts of the sneers of contempt which Guido had to bear after his return home seem to give a half-savage ironic delight to the Poet. Cf. RB., II, 625-6; III, 1445-62; IV, 1493; V, 1242-77. To these the Pope adds the final comment of matured spiritual wisdom (RB., X, 710-4):

The furnace-cosla alike of public scorn,
Private remorse, heaped glowing on his head,
What if,—the force and guile, the ore's alloy,
Eliminate his baser soul refined—

The lost be saved even yet, so as by fire?

All of these find foundation in the Book (B., 11): "He was pointed out with the finger of scorn, especially in his own country"; and (B., 16): "he was shut out of the noble company"; and a fuller account of this is found at B., 172. That Abate Paolo came in for his share of scorn may be seen in Note 305.

258—

The enumeration and description of the three suits (RB., IV, 1305-27) follows with considerable closeness the account at B., 169.

259—RB., IV, 1305:

managed the three suits

RB., VIII, 1379:

Three pending suits

Cf. B., 169: "three lawsuits pending." Cf. also RB., III, 1670; IV, 1332; V, 1343, 1442.

260—RB., IV, 1308-10:

Firat civil suit,—the one the parents brought,
Impugning the legitimacy of his wife,
Affirming thence the nullity of her rights:

Cf. (B., 169): "One as to the legitimacy of the parentage of his wife and the nullification of the dowry agreement." Cf. also B., 10, 50, 118, 144, 172, 194; and RB., II, 600, 726-32; III, 646-51.

261—RB., III, 655:

"And still six witnesses." B., 172: "Conclusive proof was given by six witnesses." Pietro in his will speaks of them (B., 128) as persons worthy of credit.

262—RB., IV, 1311-4:

This was before the Rota,—Molini,
That's judge there, made that notable decree
Which partly leaned to Guido, as I said,—
But Pietro had appealed against the same

Cf. (B., 169): "Brought by Pietro in the Tribunal of the Sacred Rota." This case was

originally tried before Judge A. C. Tommati (B., 10, 27, 118, 172; and P., 210), but after his decision (cf. following note), which was partly in favor of Guido, the case was transferred on Pietro's appeal (cf. following note) to the Rota (B., 172). "Nevertheless, an appeal was taken from that sentence and it was committed to the Sacred Rota before Monsignor Molines." Cf. RB., V, 777-8. "Beside the Tribunal of the Sacred Rota, there exists in the Roman Curia another tribunal which is called the Tribunal of the Signature of Justice. It is a High Court, and a tribunal of last instance, or ultimate appeal." Humphrey, *Urbs et Orbis*, p. 285.

263—RB., II, 742-4:

They would not take away the dowry now
Wrongfully given at first, nor bar at all
Succession to the aforesaid bequest,

This decision is described (B., 118): "He obtained for Francesca Pompilia a continuance in quasi-possession of her daughtership"; and B., 172, "continuing to Francesca Pompilia quasi-possession of her parenthood." Cf. also B., 27, 50; P., 210; and RB., III, 670-80; IV, 1313.

264—RB., II, 753:

Whence, on the Comparini's part, appeal—

B., 188: "But Pietro appealed from the decree." Cf. also B., 50, 172; P., 210; and RB., III, 681.

265—RB., II, 755:

And so the matter stands, even to this hour,

RB., III, 688:

And so the matter pends, to this same day.

B., 172: "Where it still hangs undecided." Cf. also B., 51; P., 210; and RB., IV, 24-8.

266—RB., IV, 1317-8:

Next civil suit,—demand on the wife's part
Of separation from the husband's bed

RB., II, 1287:

Pompilia sought divorce from bed and board

B., 169: "The second suit was for divorce from bed" etc., and B., 177, "and at instance of the said Francesca before the Vice-Governor of suit for separation from bed," etc. Cf. also B., 51, 100, 114, 154; and RB., III, 1427-38; V, 1247, 1319-21.

267—RB., IV, 1320:

Claims restitution of the dowry paid,

B., 177: "And the recovery of the dowry which had been spent." Cf. RB., III, 1436.

268—RB., IV, 1322:

"The Vicegerent has to judge." Cf. B., 169 and 177, "before Monsignor the Vice-Governor (*Vicegerente*)."

269—RB., IV, 1323-5:

Third and last suit,—this time, a criminal one,—
Guido's complaint of guilt against his wife

B., 169: "The third is a criminal suit as to the pretended adultery, still pending in the tribunal of His Excellency, the Governor." This trial, which is so frequently referred to in the Book as the *Processus fugae*, was the criminal

case brought against Pompilia and Caponsacchi at Guido's demand, on the charge of running away together and adultery. It covered the time from May 13, 1697, the date of Pompilia's deposition (B., 45) till September 24, the date of the judgment against Caponsacchi (B., 83). In this case Caponsacchi and Pompilia were prosecuted by the Fisc and defended by the *Procurator Pauperum*. The evidence and argument of this former case are continually referred to in the Book. Much of the printed evidence of the summaries in the Book, including the affidavits of Pompilia and Caponsacchi, had thus been a part of the adultery trial, for Guido's lawyers do all they can to fix the charge of adultery in the wife, as giving excuse for the murder. Cf. RB., IV, 1213-4.

270—RB., IV, 1262-7:

In the Tribunal of the Governor,
Venturini, also judge of the present cause.

B., 169: "In the Tribunal of his Excellency, the Governor," and B., 22: "in this very tribunal, and by his Honor, Lord Venturini, judge in this present case." Cf. B., 51, 119, 120, 175, 176, 200; and RB., III, 1334; V, 1165.

271—RB., V, 1218-22:

We, for complicity in Pompilia's flight
And deviation, and carnal intercourse
With the same, do set aside and relegate
The Canon Caponsacchi for three years
At Civita

Note that this is a close paraphrase of the actual wording of the decree of Court against Caponsacchi (B., xcix and 83). Browning has taken the words "complicity," "deviation," and "carnal" from his original. This punishment of Caponsacchi is continually referred to in both Poem and Book. Cf. B., 10, 22, 51, 57, 106, 131, 168, 175, 185, 195, 200; P., 211; and RB., I, 1038-9; II, 1177-87; III, 1409-13; IV, 1245-9; VI, 1746; IX, 1518-21.

272—RB., III, 1409-10:

unshamed,
Unpunished as for perpetrating crime.

The lightness of the above sentence in view of the seriousness of the crime charged is much discussed in the Book. The prosecutors of Guido continually assert that this was because of lack of proof of the adultery (B., 51, 57, 106, 131, 138, 140, 142, 185; and P., 211). But Spreti (B., 106) claims it was because Caponsacchi was a foreigner. Cf. RB., V, 1899.

273—RB., VI, 2013:

"*Probacionis ob defectum.*" (B., 51, 131): "*ob defectum probacionis.*"

274—RB., VI, 2017-22:

If the title ran
For more than fault imputed and not proved,
That was a simple penman's error,

When insistence on the above decree was made by Guido's lawyers in attempting to prove adultery, the above retort was given by the Fisc (B., 138) and repeated by the second Anonymous Author (B., 180), and denied by Spreti (B., 106). Cf. RB., IX, 1527-38.

275—RB., IX, 1545-55:

I traverse Rome, feel thirsty, need a draught,
Look for a wine-shop, find it by the bough
Projecting as to say "Here wine is sold!"

* * * but what sort of wine?

* * * * * * * *

That much must I discover by myself.

* * * * * * * *

Exactly so, Law hangs her title forth,

This figure of speech regarding the wine-bush is borrowed directly from the second Anonymous Writer (B., 180): "And if one will only give it due thought, the title of that case was placed there, just as a wine-bush hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good and salable and agreeable. Oh! by no means. For one may find the wine there to be sharp and muddy, and of other inferior qualities."

276—RB., IV, 1241-3:

For the wife,—let her betake herself, for rest,
After her run, to a House of Conventries—
Keep there, as good as real imprisonment:

B., 175, gives us the following account of the manner in which the case against Pompilia ended: "The case was left undecided as regards the wife, who was placed in the nunnery of the Scalette as a prisoner." (Cf. B., 121, 181; and P., 211.) This was not a punishment, but merely a continuance of the accused in custody. The *Conservatorio di S. Croce della Penitenza alla Longara* was an institution for penitent women, founded in 1615 on Via della Longara. It is also called *delle Scalette* because of two small staircase leading to the monastery and adjoining the church. It is sometimes spoken of as *del Buon Pastore*. (Moroni, *Dizionario di erudizione*, etc., vol. 17, p. 20.) Browning mistakenly identifies the Scalette with the Monastery of St. Mary Magdalene of the Convertites in the Corso. It was the latter institution which brought suit to win Pompilia's property (Note 364). (Cf. B., 202.) This act of the Court as to Pompilia is also referred to at B., 10, 51, 97, 121, 126, 175, 181; P., 211; and RB., II, 1197-9; III, 1405-6, 1491; V, 1223-5, 1917-8; VII, 1649-53; VIII, 1064; IX, 1195-1202; X, 706-7.

277—RB., II, 1198, and IV, 1242:

"The Convertites." Browning merely anglicizes the word *Convertite* found at B., 126, 202, and elsewhere.

278—RB., II, 1231:

"In Via Lungara." This place of Pompilia's detention is spoken of at P., 211, as "the monasteries of the Scalette on the Lungara."

279—RB., III, 1492-4:

for Guido's sake
Solely, what pride might call imprisonment
And quote a something gained, to friends at home, —

This is the explanation of the sentence against Pompilia as given by the second Italian Pamphlet (B., 175): "Giving some satisfaction to the Franceschini brothers in their strong insistence than because of the obligations of justice." Cf. RB., VI, 2016.

280—RB., IV, 1331-7:

For Paolo, knowing the right way at Rome,
Had, even while superintending these three suits
* * * * *

Ingeniously made interest with the Pope

RB., VIII, 1398-1408:

That we prayed Pope *Majestas'* very self
* * * * *

Grant there assemble in our own behoof
A Congregation, a particular Court,
* * * * *

To hear the several matters in dispute.—

Causes big, little and indifferent,
Bred of our marriage.

Abate Paolo, harassed by the burden of his lawsuits, had evidently tried to use the influence of patrons to help him secure a declaration in his favor (B., 121): "The Abate, seeing the cause unduly protracted, had just grounds for placing it at the feet of Our Lord [the Pope] with a memorial in which he declared that he could no longer endure such important and such various litigation and vexation arising from that luckless marriage, and he prayed that a special sitting (*Congregatio*) be appointed for all the cases—that is, the ones concerning her daughterhood, her flight, her adultery, her dowry, and others growing out of the marriage." For the interpretation of this act by the other side, see B., 175, 178, 183. Cf. RB., III, 1331-2, 1469-74, 1671; V, 1347-51, 1752-5.

281—RB., VIII, 1425-6:

Returned us our petition with the word
"Ad judicis suos," "Leave him to his Judge!"

The Pope evidently refused to interfere with the action of the courts and replied (B., 121): "The matter rests with the judges." Cf. B., 175, 183; and RB., V, 1760.

282—RB., III, 1495:

This naturally was at Guido's charge:

There seems to have been some dispute between the Comparini and the Franceschini as to which of the two should pay Pompilia's expenses while thus shut up in the Scalette (B., 51). The expense was finally met from money taken from Caponsacchi at the time of his arrest at Castelnuovo (B., 125, 176).

283—RB., III, 1500-6:

The convent's self makes application bland
That, since Pompilia's health is fast o' the wane,
She may have leave to go

The Anonymous Author (B., 121) states the matter as follows: "The nuns did not wish for her confinement to take place within their walls and therefore a pretext was found for removing her on the grounds of the said obstruction, and the necessity of removing it." Cf. RB., II, 1325-38; V, 1327, 1470-5; B., 10, 97, 165, 175, 181, 185; and P., 211; while B., 51, gives the disagreement as to bearing Pompilia's expenses as the reason.

284—

On October 12, 1697, Pompilia, for the reason given in the above note, was transferred to the home of the Comparini, which was to be strictly kept as a prison, under a bond of 300 scudi. (Cf. the decree as given in B., clv.) The fact is

continually referred to in Book and Poem. Cf. B., 10, 16, 51, 57, 61, 97, 121, 175, 181, 184, 185; P., 211; and RB., III, 1500-14; IV, 1350-1, 1518-9; V, 1328, 1473-6; VII, 318; IX, 1213-26.

285—RB., II, 1232:

"After full three long weeks." In thus counting the length of the imprisonment of Pompilia, *Half Rome* evidently counts from September 24, the date of the condemnation of Caponsacchi (B., xcix or 83) which, however, is not necessarily identical with the time of Pompilia's transfer from the prison to the Convent, to October 12, the date of the transfer to the home of the Comparini (B., 127). But RB., III, 1490, speaks of five months in the Convent, based partly on the "alcuni mesi" of B., 121, and partly on the thought that Pompilia had been in the Convent practically since she had been brought to Rome as prisoner early in May. RB., IX, 1227, speaks of six weeks, for which there is no basis.

286—

"*Domus pro carcere.*" This technical designation of the home of the Comparini is found in the decree of transfer (B., 127) and is often repeated throughout the Book. Cf. RB., II, 1342; III, 1514; VIII, 1264; IX, 1225.

On this fact was based one of the aggravating circumstances of the murder; namely, that in the slaughter of persons under custody the authority of the State was treasonably insulted. Cf. Note 420.

287—RB., III, 1509-11:

Oh, and shift the care
You shift the cost, too; Pietro pays in turn.
And lightens Guido of a load!

At B., 139, 176; and P., 211, we find that Pietro Comparini now definitely relieved the Franceschini from longer bearing the expense of Pompilia's maintenance, over which the two parties had formerly quarreled (B., 51). Cf. C., 221.

288—RB., III, 1519:

He authorized the transfer, saw it made

This reference to Abate Paolo is repeated at RB., VIII, 1266-7, and elsewhere in the Book (B., 16, 51, 55, 97, 125, 139, 152, 157, 165, 176, 181; and P., 211).

289—RB., V, 1329-30:

No-parents, when that cheats and plunders you,
But parentage again confessed in full,
When such confession pricks and plagues you more—

RB., II, 1350-4:

Theirs who renounced all part and lot in her
So long as Guido could be robbed thereby,

The Book presents such shuffling with the fact of their parentage at B., 17, 126.

290—RB., III, 1520:

"Two months after" Pompilia was transferred to the Comparini home, October 12 (Note 285), and gave birth to her child December 18 (Note 299).

291—RB., VIII, 1267-8:

did we make such grant,
Meaning a lure?

This very point is made by Arcangeli (B., 17): "Since Guido could make that pretense to gain the opportunity of killing her," etc. Cf. Note 502.

292—RB., V, 1335-7:

But a certain villa smothered up in vines
At the town's edge by the gate 't the Pauline Way,
Out of eye-reach, out of ear-shot, little and lone,

This home of the Comparini, in which Pompilia spent the last two months of her life, was probably situated on Strada Paolina in the heart of the City. B., 127, speaks of the Comparini home as on Via Paolina, but the record of the death of Pompilia in the register of San Lorenzo in Lucina (cf. Note 24) gives her home in Strada Paolina. This is also much more in accord with the exhibition of the corpses in the particular church, the parish Church of San Lorenzo. But Browning uniformly locates the home on the Via Paolina, outside the City walls in the Pauline district. I see no valid artistic reason for such a change; it was probably a misunderstanding of the fact. Cf. RB., I, 604-5; II, 206-7, 476, 1361-6; III, 1507, 1596; IV, 1369; VII, 218; XI, 1277.

293—RB., II, 1368-9:

where perchance
Some muffed Caponsacchi might repair,

The utterly unsubstantiated charge that Caponsacchi had clandestinely visited the Comparini home after the decree of banishment against him is first made in the rhetorical question of Arcangeli (B., 19): "And I wish I could say that her love affairs with the banished one were not continued." Cf. also B., 55, 122, 181; and RB., III, 1607-14; V, 1338-41; IX, 1246-60.

294—RB., IV, 1509-17:

There was a sentence passed at the same time
By Arezzo and confirmed by the Granduke.

* * * * *

—Condemns the wife to the opprobrious doom
Of all whom law just lets escape from death.

* * * * *

The Stinche, House of Punishment, for life.—

The fact of this condemnation of Pompilia in the Tuscan Courts is given in the written transcript of the report of the trial at Arezzo (B., v-viii). At B., 8: "The second Accused (Pompilia) is condemned to the penalty of Stinche for life." Cf. RB., V, 1903-13; VI, 2056-8; XI, 1663-9; XII, 719-23. But the Pope's words regarding it are perhaps very near to the feeling of the Poet in the matter (RB., X, 834-40):

that strange shameful judgment, that
Satire upon a sentence.

295—RB., VI, 2037-8:

With Giullichini; he's condemned of course
To the galleys.

Giullichini, who was made a party to the above Tuscan criminal trial, was likewise condemned (B., 8) "to the galleys * * * for five years." Cf. Note 146 and RB., XI, 1666-7.

296—RB., XI, 1665:

One week before I acted on its hint,—

RB., VI, 2040:

A fortnight since

B., 9, gives the date of this sentence as December 24, 1697. Guido is supposed to have started for Rome immediately thereafter.

297—RB., II, 1282-5:

And institute procedure in the courts
* * * * *

He claimed * * * divorce

There is no evidence that Guido actually brought a divorce suit, although he evidently sought counsel on his right to such divorce, as he stated in RB., V, 1809-12:

I wished the thing invalid, went to you
Only some months since, set you duly forth
My wrong, and prayed your remedy, that a cheat
Should not have force to cheat my whole life long.

For at B., 118, we read: "But the Franceschini were able to restrain themselves from due resentment in the hope that if Francesca Pompilia were not the daughter of Pietro and Violante, as was supposed at the time of the espousal, the marriage might be annulled and they might thus purge themselves of such a blot on their reputation. Witnesses of this feeling are found in the many authorities and experts who were requested by the Franceschini to give thought to that point and express their opinion of it. But as these did not agree, the Franceschini were unwilling to commit themselves to so doubtful an undertaking," etc. Cf. B., 120; and RB., III, 1480; V, 1247-51, 1295-1301.

298—RB., V, 1308-18:

you err
I' the person and the quality—nowise
In the individual,—that's the case in point!

Such is the very point made (B., 98): "As long as he had any hope that he might have the marriage annulled because of the mistake concerning the person married. For he was ignorant of the point of Canon Law that error as to the nature of the person contracted does not render a marriage null, but only an error as to the individual."

299—RB., II, 1383:

Gave birth, Sir, to a child, his son and heir,

B., 122: "During the month of December, Pompilia gave birth to a boy in the home of the Comparini." B., 151, gives December 18 as the date. Cf. also P., 211; and RB., IV, 1352; V, 1436-68; IX, 1309-10.

300—RB., V, 1469:

Lawful,—t' is only eight months since your wife
Left you,—

That is, from April 28 to December 18. Cf. RB., I, 792; VI, 35.

301—RB., V, 1470-1:

your babe was born
Last Wednesday in the villa,—

P., 211, says: "Which was Thursday," referring to January 2d, the date of the murder; but this was just two weeks later. Cf. Note 303.

302—RB., II, 1384:

"Caponsacchi's son." Arcangeli makes an implication of such a charge (B., 10): "Would that he had not been conceived in adultery!" Cf. RB., V, 1498, 1530-1; VIII, 370; IX, 1370.

It is well to note in this connection that both Pompilia and Bottini suggest immaculate conception, Pompilia at RB., VII, 1762-4, with devout

reverence for the story of the Mother of Christ, and the Fisc, RB., IX, 1341-66, suggests it with cynical irony. Cf. Note 22.

303—RB., I, 405:

The wife's two-weeks' babe,

This oft-repeated age of the child is correct to the day, December 18 to January 2. Cf. RB., I, 799; III, 31, 1605; VII, 14, 94, 133, 1681, 1686, 1755.

304—RB., III, 1540-1:

"I shall have quitted Rome ere you arrive
To take the one step left,"—wrote Paolo.

Abate Paolo's departure from Rome is spoken of (B., 26, 122; and P., 211); but (B., 177) we have the definite accusation: "He left Rome to take part in the planning of that notorious murder." Cf. RB., IV, 1356-7; X, 893-4.

305—RB., V, 1366-73:

Paul, finally, in such a state of things,
After a brief temptation to go jump
And join the fishes in the Tiber, drowns
Sow another and a wise way:
* * * * *

Leaves Rome,

Notice that this passage is a free, ironic paraphrase of (B., 122): "Until he felt very much inclined to throw himself into the river, as he indeed declared to all his friends. And to free himself from such imminent danger he decided to abandon Rome, the Court, his hopes and possessions, his affectionate and powerful patrons," etc. Cf. B., 182, and the fuller account C., 221, which tells that Abate Paolo lost his post as Secretary of the Knights of Malta in consequence of this disgrace.

306—RB., II, 1389-90:

Why, the overburdened mind
Broke down, what was brain became a blaze.

This account of the effect which the news of the birth of the child had upon Guido was evidently suggested by the magniloquent account of the Anonymous Author (B., 122) and repeated ironically by Browning, VIII, 601-11. Cf. B., 11: "Anger so impelled the luckless man to fury, and his indignation so drove him to desperation." Cf. also RB., IV, 1521-4; V, 1483, 1661-4.

307—RB., III, 1546-69:

By an heir's birth he was assured at once
Of the main prize, all the money in dispute:

This more sinister view of the effect of the news of the birth of the child upon the father is definitely asserted by Bottini (B., clxxxiv or 151) § *Dilatit pariter*. Cf. RB., IV, 1104-6; X, 752-74.

308—RB., IV, 1354:

First comes this thunderclap of a surprise:

Possibly suggested by "*Attonito allora il Franceschini*" (P., 211).

309—RB., V, 1478:

And he's already hidden away and safe

B., 129, speaks of the child having been hidden away with a nurse. Cf. also B., 19, 201, 203; C., 222; and RB., VII, 42, 48-9, 205-7.

310—RB., II, 1391-3:

(that first news
Fell on the Count among his vines, it seems,
Doing his farm work.)—why, he summoned steward.

Possibly suggested by (B., 107): "While we were staying at the said vineyard," or (B., 108): "In presence of the keeper of the vineyard" (*vignarolo*).

311—RB., XI, 1888-9:

Look at those four young precious olive-plants
Reared at Vittiano,—

B., 107: "The Santi above named was a laborer of mine at my Villa of Vittiano." This is the only point at which the name of the villa is given, though there is mention of the villa in the forged love-letters. Browning uses the name repeatedly (RB., III, 311, 1575; IV, 1360; V, 364, 1550-1; VI, 519, 591). That the negotiations between Guido and his hirelings took place at this villa is indicated by their sworn testimony (B., 107). The supposed reply of these laborers given by the Poet (RB., V, 1556-60) was evidently suggested by the words at B., 107. A fuller account of the hiring of these assassins is given in the Casanatense pamphlet (C., 222).

312—RB., II, 1394:

"Four hard hands." The names and homes of these four assassins are given at B., xxv, and again at B., lxii. Cf. RB., X, 777-8.

313—RB., V, 1566:

Took whatsoever weapon came to hand,

Probably meant as Guido's justification for the fact that he was bearing illegitimate arms. Cf. Note 413.

314—RB., V, 1567-8:

And out we flung and on we ran or reeled
Rowerward. I have no memory of our way,

Possibly suggested by (B., x or 11): "*obca-
cata mente iter arripuit*."

315—

Biagio Agostinelli, who had no hand in the killing, but only stood guard at the outer door (B., 187, and P., 212), was exempted from the re-examination under the torture of the vigil (B., 105, 114). A fragment of his testimony is given (B., 108).

316—RB., IV, 1361:

Comes to terms with four peasants young and bold.

Some discussion is given in the Book to the question whether Guido had the right to hire assassins (B., 15, 26, 33). Browning has the Pope lay far more stress on this phase of the matter in his strong condemnatory words (RB., X, 931-63). Something of these negotiations are given by Guido and his associates in their testimony (B., 107-8). Cf. C., 222; also RB., IV, 1557; VIII, 1500-8.

317—RB., III, 1582-3:

And so arrived all five of them, at Rome
On Christmas-Eve,

P., 211: "On Christmas-eve reached Rome." The Poet repeats this fact with various interpreta-

tions at RB., IV, 1363; V, 1581-1610; VIII, 365-381, 1071; and closes with the Pope's protests against the desecration of the sacred season (RB., X, 788-90).

318—RB., III, 1584-5:

Installed i' the vacancy and solitude
Left them by Paolo,

P., 211: "He stopped at Ponte Milvio, where there was a villa of his brother, and there he remained in hiding with his followers until a time opportune for the execution of his designs should come." Browning refers to this delay of nine days at RB., IV, 1364-6; V, 1588-1610; VIII, 1073-90. The last is the sophistical interpretation of Arcangeli; but the second, which presents the cunning self-justification of Guido, is even more interesting.

319—RB., III, 1592-3:

"But, two, proceeded the same bell." The fact that the murder was committed on January 2d, is mentioned (B., II, 50, 151; and P., 211). Cf. RB., I, 606, 795.

320—RB., IV, 1371:

"Tis one i' the evening." Browning here takes not merely the fact but the form of expression, an Italianism, from the Book (B., lxii), "*hora prima noctis*," and P., 211: "*un' hora circa di notte*."

321—RB., V, 1628-33:

The name, * * * I knocked, pronounced
Caponacci

This fact that Guido used the name of Caponacci and pretended he brought a letter from the Canon is often repeated and interpreted in the Book (B., II, 19, 51, 99, 122, 153, 165, and P., 212). C., 222, gives a fuller account of this incident. Browning repeats the fact many times in the Poem, with various interesting comments by the speakers (RB., I, 395-8, 619-24; II, 1406-31; III, 1597-9; IV, 1371-2; VII, 59-60, 219). But most interesting of all is Pompilia's word, VII, 1808-14:

It was the name of him I sprang to meet.
When came the knock, the summons and the end.

Browning spurns all apology for what might seem compromising; in fact he is too proudly confident of the purity of Pompilia, we might say defiantly confident.

322—RB., II, 1435:

And wiped its filthy four walls free at last

Possibly suggested by the rhetorical flourish of the Anonymous Writer (B., 123). To this there is a contemptuous retort (B., 181).

323—RB., III, 1620-1:

"Come in," bade poor Violante, * * *
* * * that death was the first,

P., 212: "He leaped upon Violante Comparini, who had opened it, and struck her dead to the ground." Cf. B., II, 51, 99, 153; C., 222; and RB., IV, 1373-4, 1576; V, 1649-60.

324—RB., III, 1622-3:

Pietro * * *
Set up a cry—"Let me confess myself!"

P., 212: "Comparini * * * who * * * cried confession." Cf. RB., IV, 1377-9; XI, 471-4; and C., 222.

325—RB., IV, 1382:

Pompilia rushes here and there

P., 212: "Pompilia * * * extinguished the light, hoping thus to escape the assassins, and ran to the neighboring door of a locksmith, crying out for help. But when she saw that Franceschini was provided with a lantern, she went to hide under the bed," etc. Cf. also B., 51.

326—RB., VII, 38:

"Twenty-two dagger-wounds." P., 212: "She was barbarously slain with twenty-two wounds." C., 222, gives further details of the murder.

327—RB., IV, 1385:

He lifts her by the long dishevelled hair,

B., 182: "Taken her by the tresses and lifting her from the ground." Cf. C., 222.

328—RB., IV, 1390:

"On dead Pietro's knees." B., lix: "*testa sulle gambe*," and P., 212: "*trasse ai piedi di Comparini*." Cf. line 1437.

329—RB., IV, 1435-6:

She bore the stabbing * * *
Without a useless cry,

RB., IX, 1421:

She, while he stabbed her, simulated death.

These are based on (B., 182): "Poor wife knew by natural instinct how to feign it by her relaxation." Cf. C., 222.

330—RB., IV, 1391:

"Let us away, my boys!" P., 212: "Let us lose no time, but return to the vineyard."

331—RB., III, 1627:

The noise o' the slaughter roused the neighbourhood.

P., 212: "When the uproar of this horrible slaughter was heard abroad people ran thither." Cf. RB., IV, 1393-4; and C., 222.

332—RB., II, 27:

But she took all her stabbings in the face,

P., 212, says this of Pompilia, not of Violante: "were so disfigured, and especially the wife of Franceschini by wounds in the face, that they were no longer recognizable." Cf. RB., II, 615-6.

333—RB., IV, 1395-6:

Soon followed the Public Force, pursuit began
Though Guido had the start and chose the road:

P., 212: "When the posse (*Forza*) arrived at the vineyard he found that they were no longer there, but about an hour ago they had left in the direction of the highway." Cf. B., 51.

334—RB., XI, 1623-4:

"But, drunk, redundantly triumphant." Possibly suggested by (B., 11): "His dull and unforeseeing mind suggested no way to find a place of safety." Cf. also B., 123; and RB., V, 1715-9.

335—RB., XI, 1633:

"Therefore, want horses in a hurry." Possibly suggested by (P., 212): "Franceschini had demanded horses with threat of violence."

claim. Such was not the case. (Cf. Note 364.) In RB., III, 37, *Other Half Rome* gives St. Anna's as the place of her death, possibly suggested by the fact that Fra Celestino is spoken of (B., 47) in that way. The entry of her death in the parish register of San Lorenzo in Lucina (Note 24) proves that she died in her own home. Hence the hospital bed and hospital cell of Book III are a violation of historic fact, undoubtedly for considerable artistic gain. The death record (p. 280) runs as follows:

"La Signora Francesca Pompilia Comparini Romana in età di anni diciette e mezzo figlia dell'quondam Signor Pietro Comparini Romano Moglie dell'Signor Guido Franceschini di Arezzo di Toscana morì nella Comunione della Santa Madre Chiesa nella Casa dove abitava alla strada paolina ricevè tutti li Santissimi Sacramenti e fu seppellita in questa nostra Chiesa."

352—RB., I, 1087-90:

For friend and lover—feech and man of law
Do service; busy helpful ministrants
As varied in their calling as their mind,
Temper and age:

Referring to the several persons, priests, apothecary, etc., who testify as to her dying hours (B., 45-8). Cf. B., 136, 182.

353—RB., III, 457:

a son!
To shrieve: 'twas Brother Celestine's own right,
The same who noises thus her gifts abroad.

This refers to the important affidavit of Fra Celestino "the Augustinian Brother" (RB., III, 18-9), which is given (B., 45-6, 47). It was made January 10, 1698, evidently at the request of Pompilia's executor, Tighetti (B., 109, 136). The old Priest speaks with evident emotion and conviction and there can be no doubt of the fact that he was profoundly impressed by the saintliness of the dying girl. The affidavit is the subject of repeated dispute between the lawyers (B., 45, 64, 109, 200). Cf. RB., III, 799-803; VI, 2060.

354—RB., VI, 2061-3:

he confessed, he says,
Many a dying person, never one
So sweet and true and pure and beautiful.

Suggested by the word of Abate Liberato Barberito (B., 48): "I can attest that during the experience I have had, having been four years vicar in the Cure of Monsignor, the Bishop of Monopoli of blessed memory, I have never observed the dying with like sentiments."

355—RB., IV, 1446-9:

So, when they add that her confession runs
She was of wifehood one white innocent
In thought, word, act, from first of her short life
To last of it;

RB., IX, 1437-8:

Admitted not one peccadillo here,
Pretended to perfection,

B., 47: "She always responded that she had never committed any offense against her husband, but had always lived with all chastity and modesty." Cf. B., 63, 136, 182.

356—RB., IV, 1449-50-52:

praying, i' the face of death,
That God forgive her other sins—not this,

Evidently suggested by (B., 47): "She said that God should not pardon her for that sin, because she had never committed it." Cf. B., 64, 136.

357—RB., IV, 1453-4:

So much good,
Patience beneath enormity of ill,

Suggested by (B., 45, 46): "But what is more to be wondered at is that, although she suffered great pain, I never heard her speak an offensive or impatient word nor show the slightest outward vexation," etc.

358—RB., IV, 1455:

"I hear to my confusion." B., 45: "To my own confusion I have discovered and marveled at an innocent and saintly conscience."

359—RB., XI, 1729:

Forgiving me (her monks begin to weep)

B., 45: "May Jesus pardon him, as I have already done with all my heart." And B., 47: "May God pardon him in heaven as I pardon him on earth." Cf. RB., III, 33, 811; VII, 1707-9; B., 65; and C., 233.

360—RB., IX, 1466-73:

'Twas charity, in her so circumstanced,
To spend the last breath in one effort more
For universal good of friend and foe:
* * * * *

Re-integrate—not solely her own fame,
But do the like kind office for the priest
Whom telling the crude truth about might vex,

RB., IV, 1465:

First sets her lover free,

Arcangeli (B., 95) puts this very interpretation on the dying words of Pompilia: "For this kind of exculpation, which is all too much a matter of pretense, might help her companion, just as heretofore she had brought blame upon him."

361—RB., IV, 1470-1:

thus she dies revenged to the uttermost
On Guido,

This very charge is made by Arcangeli (B., 95): "And what is more horrible, that, from the said exculpation, her murderer might be the more severely punished." To this Bottini replies (B., 138): "Nor does the assertion of Pompilia when dying tend principally toward vengeance." Cf. RB., IX, 1476-91.

362—RB., IV, 1478:

Confession of the moribund is true!

Such is the claim of the lawyers for the Fisc (B., 55, 64, 136, 182), and this is refuted by Guido's defenders (B., 95, 109).

363—RB., IX, 1462-4:

Nam in articulo mortis, * * *
* * * * *

Nemo presumitur reus esse * * *

This exact quotation is not found in the Book, and it was possibly drawn from some other old

authority to which the Poet had made reference in the case. B., lxxvi or 63-4, is perhaps nearest to it: "assertio in articulo mortis emissum omnem fidem meretur, cum nemo tunc mentiri praesumitur."

364—

Within a month after the death of Pompilia the Monastery of the Convertites laid claim to her whole property. The Monastery of Sta. Maria Maddalena delle Convertite al Corso was founded by Leo X in 1520 *pro mulieribus ab in-honesta vita ad honestam se convertentibus* (Bull, May 19, 1520) with the privilege of receiving the property left by bad women who died in Rome, except when these women had legitimate children or had left one-fifth of their property by will to the said Monastery. It ceased to exist as such about the end of the 18th century. (Moroni, *Dizionario di erudizione*, Vol. I, p. 136.) There is therefore no reason for assuming, as Browning does, that these nuns had ministered to Pompilia during her dying hours, and had then turned against her for the sake of securing her property. (Cf. Notes 276, 351.) Lamparelli's argument, pamphlet 17, and the final decree, pamphlet 18, are from this trial. Browning makes both the Pope and Bottini give versions of this (RB., X, 1499-1524; and XII, 672-701). This trial is mentioned (B., 109, 122, 137).

365—RB., IV, 12-4:

Now for the trial * * * to test
The truth, weigh husband and weigh wife alike
I' the scales of law,

That is the trial of Guido and his companions on charge of murder (Note 8). This trial evidently began soon after the murder, as the opening speeches on both sides refer to the "current month of January" (B., 11, 50). Cf. RB., VIII, 22. The last Summary pamphlet 11, includes an affidavit (B., 127) dated February 9. The closing argument of Bottini, pamphlet 13, makes reference to this Summary. This argument and the closing argument for the defense, pamphlet 16, therefore fall between February 9 and the final date of decision, February 18. This gives foundation for Browning's saying the length of the trial was a month. Cf. RB., I, 241, 819; IX, 132; XII, 425.

366—RB., I, 120:

"Romana Homicidiorum." These words are found on the back of the Book, on the title-page, in the separate file label on the back cover of each of the pamphlets, and as titles for the arguments. The ellipsis is "causa," though in the pamphlet-titles it may be "informatio," the name used in the arguments in referring to former arguments. The Poet (RB., I, 121) translates it as "Roman murder-case."

367—RB., I, 165:

Twas the so-styled Fisc began,

Possibly Browning was led astray here by the English practice, the Common Law. In this case, which as a matter of course follows the Civil Law, the Roman practice is followed, and Arcangeli

opens the case with the first pamphlet of the Book for the Defense.

368—RB., I, 165:

"The Fisc, the Public Prosecutor." The cases against criminals in the Papal courts of criminal procedure were conducted by the advocates and procurators of the *Fiscus*, or Treasury (the State in English Law). The Poet continually names Bottini by this clipped form of his title, *Advocatus Fisci*. The full title is given in the heading to Book IX, *Fisci et Reverenda Camera Apostolicae Advocatus*, and as such, with due abbreviations, he signs his arguments (B., 67, 158, 166).

369—RB., VIII, 246:

Having the luck o' the last word, the reply!

The last word in fact seems to have been given by Spreti in pamphlet 16.

370—RB., VIII, 275:

There's my subordinate, young Spreti,

Spreti as *Advocatus* was really the official equal of Arcangeli, who was *Procurator*. The following passage makes plain their respective functions: "There is a difference between the advocate and the procurator. The advocate is a man skilled in civil and canon law, who defends causes in writing or by word of mouth, on the point of law, setting before the judges that which is true in law, or best founded in law, or the principles of law which ought to be applied in a particular case. His is the scientific part of the cause, and he speaks only to the point of law. * * * Matters of fact are to be established by the procurators, and it is upon these established facts that the advocate develops his judicial conclusions. Hence it is that the office of advocate in the Roman courts is sometimes exercised by ecclesiastics in laic orders." Humphrey, "*Urbs et Orbis*," p. 428.

371—RB., VIII, 276:

"He'll pant away at proof." Evidently suggested by Spreti's second and most important argument, pamphlet 9, which presents an exhaustive discussion of the proof or fact in the case.

372—RB., VIII, 128:

"*Pro Guidone et Sociis.*" A phrase found in the various file-titles of the arguments for the Defense (B., xxiv; xl; cxxiv; cxl).

373—RB., I, 1053:

"Who, eight months earlier." That is during the *Processus fugae*, which had been begun the preceding May.

374—RB., I, 177:

the so-styled Patron of the Poor,

RB., VIII, 1528-9:

Pauperum Procurator is my style:
I stand forth as the poor man's advocate;

Browning's translation of the official title of Arcangeli, *Procurator Pauperum*, with which he always accompanies his signature. Cf. his full name and title at the beginning of Book VIII and his name VIII, 114, with his signatures to the arguments (B., xxii; xlvi; cxxiii).

375—RB., I, 1128:

"Don Giacinto of the Arcangeli." This is the Italian form of Arcangeli's name, and as such he signs himself in the letter (B., 190). The Poet invents the eight-year-old "curly-pate" and names him for the father, who plays with almost exhaustless variation on the child's name—Cino, Cintino, Cinerello, while the Latin form of the name Hyacinthus is used (RB., VIII, 180).

376—RB., I, 179:

"Too poor to fee a better." Here again the Poet is thinking of the procedure of English courts, where the judge appoints counsel for the Accused when the latter is "too poor to fee a better." But in trial by Civil Law procedure is somewhat different. The State (B., 114), by its officers, conducts not merely the Prosecution, but the Defense as well—it being the theory that it is as much the State's obligation to defend as to accuse those before its bar. Nevertheless Pellegrini speaks of this matter as follows: "This privilege of defense demands that a defender be assigned to the accused, even against his will and when he claims to be quite capable of his own defense. For to a poor defendant an advocate should be depated at the expense of the court; and to a rich one, or a skilled one in the law, an advocate should be appointed, but at his own expense." (*De Judiciis Ecclesiasticis*, Lib. II, Vol. 4, p. 320).

377—RB., I, 199:

Thus did the two join issue—nay, the four,

There was an advocate and procurator on each side of the case. The Defense in this case is almost equally shared by the two officers, but the Prosecution is largely in the hands of Bottini. Cf. RB., IV, 44-7.

378—RB., I, 213:

Beside, the precedents, the authorities!

Very naturally in these arguments, the citation of law and precedent is very extensive, and this excites the Poet's ironic comment.

379—RB., I, 222:

Solon and his Athenians?

RB., VIII, 570-1:

The Athenian Code, Solon's,

One of the earliest citations in the Book is (B., x) *legibus Atheniensium, et Solonis.*

380—RB., I, 226-8:

Cornelia de Sicariis hurried to help

Pompeia de Parricidiis; Julia de

Something-ot-ther jostled *Lex this-and-that;*

The *lex Cornelia de Sicariis*, the *lex Pompeia de Parricidiis*, and the *lex Julia de Adulteriis* are repeatedly cited in the Book. Cf. RB., VIII, 574.

381—RB., VIII, 572-3:

The Laws of the Twelve Tables, that fifteenth,—
"Romulus"

RB., I, 222-3:

Quote the code
Of Romulus and Rome!

These citations immediately follow the above (B., x): "*in illo rudi saeculo Romuli leg. 15.*" and "*in legibus 12 Tabul.*" There seems to be a mispunctuation at the end of RB., VIII, 572.

382—RB., I, 224:

"Baldo, Bartolo." Both are cited frequently in the Book.

383—RB., I, 229:

"Apostle Paul." Paul is cited (B., 15 and 113). The latter citation is quoted in full. (RB., VIII, 673-9). Cf. Note 483.

384—RB., I, 231:

That pregnant instance of Theodosius.
Given at B., 23, 113. Cf. RB., VIII, 482-7.

385—RB., I, 232-6:

"That choice example Aelian gives." Given at B., 120. Cf. RB., VIII, 512-21.

386—RB., VIII, 328:

Our Farinacci, my Gamaliel erst,

This famous Italian Jurist is repeatedly cited in the Book. It is evident that one of these citations (B., 28) was followed up by the Poet, as he quotes from Farinacci at this point in his description of the torture of the vigil. Cf. notes following and Note 526.

387—RB., VIII, 333-4:

Lasting, as it may do, from some seven hours
To ten;

Farinacci says: "*definetur per quinque aut per decem horas quandoque etiam paulo plus.*"

388—RB., VIII, 338-43:

Farinacci
"Out of each hundred cases, by
my count,
Never I knew of patients beyond
four.
Withstand its taste, or less than
ninety-six
End by succumbing: only martyrs
four.
* * * * *
Ninety-six full confessors."

389—RB., VIII, 346:

Death on the spot is no rare consequence:

Farinacci, "*et plures ob id mortui fuerunt in
ipsa tormento.*"

390—RB., VIII, 349-353:

The accomplice called Baldeschi: they were rough,
Dosed him with torture as you drench a horse,

* * * * *

So, two successive days he fainted dead,

And only on the third essay, gave up,

P., 213: "Baldeschi made denial, even though
the 'cord' was administered to him twice, under
which he swooned. Finally he confessed."

391—RB., VIII, 498-9:

Scaliger,
(The young sage,—see his book of Table-talk)

The Poet did not find this in the Book, but in the explanation of the expression, *caste apes* in the Scaligerana of Joseph Just Scaliger: "*Les abeilles sentent si un homme a couché avec sa femme, indubitablement le lendemain s'il approche il est picqué.*"

392—RB., VIII, 502-3:

I mind a passage much confirmative
I' the Idyllist

There is no such quotation in the Book, nor is there any such passage in the Idyllists. The

Poet in his humorous presentation of Arcangeli makes him confuse his reference.

393—RB., VIII, 666:

"*Honorem nemini dabo.*" This pseudo-saying of Christ is found (B., cli or 124). Browning evidently did not know of any source beyond the Book, as he makes the Pope question its authenticity (RB., X, 1986-7). Cf. also RB., V, 1704-5.

394—RB., VIII, 680:

Saint Ambrose makes a comment with much fruit,

This citation, which the Poet in his waggish humor causes Arcangeli to forget, is given (B., 113): "For who does not consider an injury to the body or the loss of patrimony less than injury to the spirit or loss of reputation?"

395—RB., VIII, 811-21:

"Sicily's Decisions sixty-first." This citation is given (B., xxviii or 24): "*Muta dec. Sicilia 61*"—"the husband was condemned to the galleys for seven years. For he had his wife summoned outside the city walls by his son and there had killed her; and afterward her body was found to have been devoured by dogs." Cf. B., 111, for the name Leonardus.

396—RB., VIII, 824-30:

The "fructuous sample" of the Dutch Jurist Matthaeus is given by Spreti as follows (B., 111): "It was decided that the husband had proceeded too treacherously in pretending absence, in taking his brother with him, and in killing with prohibited arms."

397—RB., VIII, 1228-47:

The case from Cæsar Panimolle, not Panicollus as Browning has it, is found (B., 24): "Certain noble young men who had killed their wives after an interval because of strong suspicion of adultery, were absolved by the Royal Council of Naples in view of the quality of the persons concerned *** although some *** were condemned to the oars because of certain mutilations *** because those who do such things are considered enemies of nature."

398—RB., VIII, 1541-57:

This citation is found (B., 29): "And Castrensis holds *** that when one is permitted under the statute to take vengeance upon a person who has given him offense, he is also permitted to assemble his friends to afford him aid; *** a husband who had assembled men to beat one who had wished to shame the modesty of his wife *** ordered his wife to pretend to give ear, and when the intriguer had come, murder was committed."

399—RB., VIII, 425:

"*Honoris causa.*" This claim is made continually in the Book and is practically the sole defense of Guido. Cf. RB., II, 29; VIII, 1477; and C., 223.

400—RB., VIII, 699-722:

This ironic line of argument from Arcangeli's lips is doubtless suggested by what the real Arcangeli has said without any such irony (B.,

13): "In ancient times, while the *lex Julia* was in force, wives who polluted their marriage bed underwent the death penalty. *** Likewise it was so ordained in the Holy Scriptures, for adulterous wives were stoned to death. *** The solace drawn from public vengeance quieted the anger and destroyed the infamy. But now, in our days, there is a deplorable frequency of crime everywhere, as the rigor of the Sacred Law has become obsolete. *** The husband's condition would indeed be most unfortunate if either he must live perpetually in infamy or must expiate her destruction *** by the death penalty."

401—RB., VIII, 859:

But why the innocent old couple slay,

Just this turn is given to the argument from time to time (B., 17, 55, 98, 152, 181).

402—RB., V, 2003:

Absolve, then, me, law's mere executant!

Possibly suggested by (B., 23): "Since for a husband to use the sword for the love of his honor is not to overthrow the laws, but to establish them."

403—RB., VIII, 983-95:

We grant you should have killed your wife,
But killed o' the moment,

Bottini (B., 160) says: "I acknowledge that the Accused should be considered worthy of some excuse if he had slain his wife in the act of taking her in flight with the pretended lover. *** The suspicion of a just grievance *** excuses the husband *** whenever he takes vengeance immediately." Cf. B., 119; RB., II, 1488-1503; V, 1068-70, 1878.

404—RB., VIII, 999-1003:

For, wound ***
My body, and the smart soon mends and ends:
White, wound my soul where honour sits and rules,
Longer the sufferance, stronger grows the pain
Being ex incontinenti, fresh as first.

Exactly this point is made by Arcangeli (B., xv, § *Ultra quod*). Cf. RB., IV, 1528-42.

405—RB., VIII, 1003:

"*Ex incontinenti.*" Should be "*incontinenti*" as contrasted with the phrase *ex intervallo*. Both phrases are used continually in the Book.

406—RB., VIII, 1043-53:

This very point of law is made by Arcangeli (B., xv, § *Præterea*).

407—RB., VIII, 1056-70:

This point of law is taken with some intermingling of irony from B., 16.

408—RB., I, 169:

With five . . . what we call qualities of bad,

These aggravating circumstances of the murder are much discussed by the lawyers, and the Poet has made them a feature of Arcangeli's monologue (RB., VIII, 1108-1381), where he follows the order and discussion of Gambi (B., 53-55). The word "quality" is a mere anglicizing of the frequently repeated "*qualitas*" of the Book.

409—RB., VIII, 1119-25:

first aggravation * * *
 * * * * * * *
 A regular assemblage of armed men,
Coadunatio armatorum, * * *
 Unluckily it was the very judge

B., 53: "The first of these is the assembling of armed men; for according to decrees the Governor of this city," etc. Cf. B., 15, 26, 35, 100, 111, 155, 162.

410—RB., VIII, 1126:

"Four men armed." Cf. B., 53, "even if those assembled are but four." Cf. B., 162.

411—RB., VIII, 1130-8:

This shrewd subterfuge is employed by the real Arcangeli (B., 101) and is refuted by Bottini in turn (B., 155).

412—RB., VIII, 1146-52:

Suppose a man
 Having in view commission of a theft,
 Climbs the town-wall: 'tis for the theft he hangs,
 * * * * * * *
 Law remits whipping, due to who climbs wall

This is only a humorous adaptation of the point made by the real Arcangeli (B., 101): "Thus if one wishing to commit theft climbs over the walls of the city—even though he could commit that deed without the crime of crossing the wall—even then only a single penalty, namely that for theft, is inflicted as the one chiefly in mind."

413—RB., VIII, 1157-64:

Next aggravation,—that the arms themselves
 Were specially of such forbidden sort
 * * * * * * *
Delata armorum, * * *
Contra formam constitutionis, of
 Pope Alexander's blessed memory.

B., 53: "The second quality and circumstance is the carrying of arms contrary to the specification of the Constitution of Alexander VIII." This aggravating circumstance—the use of wantonly cruel arms—is also discussed (B., 31, 36, 67, 101, 124, 156, 163).

414—RB., VIII, 1170:

Such being the Genoese blade with hooked edge
 RB., II, 147-8:

Triangular i' the blade, a Genoese,
 Armed with those little hook-teeth on the edge

Evidently based on (P., 212): "Franceschini's dagger was of a Genoese pattern, triangular, and with certain hooks made in such a way that, in wounding, they could not be drawn from the wound without such laceration as to render the wound incurable." Cf. B., 102, and the Pope's indignant denunciation of it, RB., X, 743.

415—RB., VIII, 1176-7:

Then, if killed, what matter how?
 By stick or stone, by sword or dagger.

Arcangeli says (B., 102): "It would have been the very same if they had been slain with the longest of swords, or with sticks, or with stones."

416—RB., VIII, 1190-2:

Through lack of arms to fight the foe:
 We had no arms * * *
 An unimportant sword and blunderbuss,

This point is made by Arcangeli (B., 96), but there the blunderbuss (*archibusata*), according to Guido's statement, was in the hands of Caponsacchi. Cf. B., 53.

417—RB., VIII, 1250-6:

Third aggravation * * *
 * * * * * * *
 * * * murdered in their dwelling-place,
In domo ac habitatione propria,

This third aggravation, breaking in upon the sacred precincts of a home with murderous intent, is much discussed. Cf. B., 54, 66, 165.

418—RB., VIII, 1315, 1318, 1320:

Fourth aggravation * * *
 * * * * * * *
Mutatio vestimentorum * * * *homicidium ex insidiis*

This aggravating circumstance is urged only at B., lxvi or 54: "*cum mutatione vestimentorum, quo casu homicidium dicitur commissum ex insidiis*."

419—RB., VIII, 1339-40:

Fifth aggravation, * * *
Sub potestate judicis, * * *

The lawyers evidently considered this circumstance as of great importance. Pompilia was still a prisoner, and therefore in the custody of the State, which was violated by the murder (B., 54, 98, 111, 112, 157, 165).

420—RB., VIII, 1373-6:

Cannot we lump this with the sixth and last
 Of the aggravations—that the Majesty
 O' the Sovereign had received a wound? to-wit,
Lesa Majestas,

This is not treated by the lawyers as a separate aggravation but three of these attendant crimes—namely, the assembling of armed men, the murder of a prisoner, and murder in anger over a lawsuit, are all of them spoken of as *Lesa Majestas*, or criminal insult to the majesty of the law, or of the authority of the Prince. See especially B., 164. Cf. also B., 54, 66, 135, 154, 165.

421—RB., VIII, 1378:

In odium litis: To use violence because of anger over a lawsuit was in itself a capital crime, and Guido is charged with this motive in the death of Pietro. Cf. B., 27, 66, 100, 113, 133, 153, 164.

422—RB., VIII, 1521-2:

Reminds me I must put in a special word
 For the poor humble following,

The plea for the fellow criminals is added to several of the arguments, and the third pamphlet is entirely devoted to their case.

423—RB., VIII, 1578-83:

Of the other points that favour, leave some few
 For Spreti; such as the delinquents' youth.
 * * * * * * *
 Two may plead exemption * * *
 Being foreigners,

These points of law, though slightly touched upon by Arcangeli (B., 103), are fully discussed by Spreti in each of his three arguments (B., 31, 114, 187).

424—RB., VIII, 1580-1:

One of them falls short, by some months, of age
Fit to be hanged by the gallows;

RB., X, 964:

And none of them exceeds the twentieth year.

Minority is claimed for Domenico and Francesco (B., 187), but this evidently means less than 25. Francesco's age is given (B., 187) as 24. According to P., 213, the others were 22. Cf. RB., X, 2080-1.

425—RB., IX, 1406:

I leave my proper function of attack!

Bottini answers somewhat tartly (at B., 135) this very complaint on the part of Spreti.

426—RB., IX, 569:

So would he bring a star on Judith's self,

Just such reference to Judith is made by Bottini (B., 61) to which Arcangeli retorts (B., 91). Her example is again cited (B., 179).

427—RB., I, 245-6:

Till the court out all short with "Judged, your cause.
Receive our sentence!"

The formal sentence against Guido and his companions is given in the Book only at B., 193, but the letters (B., 190-1) speak of it. Cf. RB., I, 257: "I learn this from epistles," etc. C., 223, gives an account of the way Guido received this sentence, quite out of keeping with the Poet's conception of the character.

428—RB., I, 274:

Procedure stopped and freer breath was drawn

Evidently suggested by the words of the third letter (B., 191): "At this favorable decision, the defense took heart and Guido's good friends began to breathe again."

429—RB., I, 283:

Even the Emperor's Envoy had his say

Evidently suggested by the second letter (B., 191): "The Ambassador of the Emperor spoke of that point on Tuesday, as he himself told me day before yesterday." Cf. RB., XI, 2279.

430—RB., I, 346:

I find, with his particular chirograph,

Browning merely anglicizes the words of the first letter (B., ccxxxv): "chirografo particolare." This of course is utterly unintelligible as English idiom. The words seem to refer to the special writ of condemnation, the order for the execution. Spelled cheirograph at RB., XII, 258.

431—RB., X, 212:

I have worn through this sombre wintry day,

RB., I, 1236:

Droop of a sombre February day

Referring to Friday, February 21, the eve of the execution of Guido. Cf. RB., X, 283-5.

432—RB., I, 347-8:

Friday night;

And next day, February Twenty-Two,

This was indeed Friday night, as can be gathered from the second letter (B., 191), where the date of sentence, February 18, is spoken of as

being on Tuesday. (Cf. RB., XII, 245.) Arcangeli's letter (B., 190), written the day of the execution, is dated February 22.

433—RB., XII, 118-23:

no sooner the decree
Gone forth, * * *
Than Acciaiuoli and Panciatichi,
* * * * * * * * *
* * * intimate the sentence

P., 213: "They were assisted by Abate Panciatichi and Cardinal Acciajoli." Nicolas Acciajoli was born at Florence on July 10, 1630, became cardinal November 29, 1669, and died February 23, 1719. Bandino Panciatichi, also a Florentine, born June 10, 1629, became cardinal February 13, 1690. For a time he was patriarch of Jerusalem, and at this time was prefect of the congregation of the council. They were aged and distinguished ecclesiasts, probably chosen in deference to Guido's rank. They certainly were not the type of men to "crouch * * two awe-struck figures" (RB., I, 1290-2). C., 224, is likewise at odds with the passion imagined by Browning for his Guido at the hour of death. The Poet's version is in accord with the increase of the terrible in the villainy of Guido. Cf. RB., XI, 1-2.

434—RB., XII, 124:

Were closed ere cock-crow with the Count.

P., 213: "At the eighth hour (2 a. m.), Franceschini and his companions were informed of their death." Cf. RB., XI, 24.

435—RB., XII, 129-30:

And when the Company of Death arrived
At twenty hours,—the way they reckon here,—

P., 213: "At the twentieth hour (2 p. m.), the Company of Death and of Pity arrived at the Prisons." Cf. RB., I, 1309-19; XI, 2414-5.

436—RB., XI, 32:

And why, then, should I die twelve hours hence?

The "twelve hours" was evidently drawn from the comparison of the times given in the two preceding notes. Cf. line 123.

437—RB., XII, 128:

Were crowned at last with a complete success.

P., 213: "Nor did they delay in preparing themselves to die well." C., 224, gives a much fuller account of this. Cf. RB., XI, 433; XII, 417.

438—RB., XII, 132-4:

The Count was led down, hoisted up on car,

Last of the five, as heinousest, you know:

Yet they allowed one whole car to each man.

Cf. P., 213: "The condemned were made to go down stairs and were placed upon separate carts to be drawn to the place of execution."

439—RB., XII, 135-7:

His intripidity, nay, nonchalance,
As up he stood and down he sat himself,

Struck admiration into those who saw.

P., 213: "Franceschini, who showed more intripidity (*intrepidezza*) and composure (*sangue freddo*) than the others, to the wonder of all." Cf. C., 224, where Guido's attitude is described quite differently.

440—RB, XII, 139-44:

From the New Prisons by the Pilgrim's Street,
The Street of the Governo, Pasquino's Street,
* * * * *

The Place Navona, the Pantheon's Place,
Place of the Column, last the Corso's length,

The Poet merely adopts the statement of the line of march as given (P., 213): "Partirono dalle Carceri tenendo la Strada del Pellegrino, del Governo, di Pasquino, Piazza Navona, la Rotonda, Piazza Colonna, ed il Corso." Cf. RB, I, 1325. C., 224, gives an interesting amplification of this journey to the scaffold, quite different from that at RB, XII, 150-63.

441—RB, I, 1328:

Two gallows and Mannaia crowning all.

P., 213: "A great platform with mannaia, and two great gallows, which had been built for the execution of the criminals." A fuller account is given C., 224. Mannaia is also mentioned B., 124. Browning treats this subject with most graphic and passionate power in the words of Guido (RB, XI, 186-258).

442—RB, I, 350:

Not at the proper head-and-hanging-place

RB, XII, 106:

The substituting, too, the People's Square

P., 213: "On February 22, was seen in the Piazza del Popolo." Cf. RB, X, 2108-11; XII, 146, 311-2; and C., 224.

443—RB, XII, 113-5:

Palchetti were erected in the Place
And houses, at the edge of the Three Streets.
Let their front windows at six dollars each:

Cf. P., 213: "Many stands (*palchetti*) were constructed for the accommodation of those curious to see such a terrible execution, and so great was the concourse of people that some windows brought as much as six dollars." Cf. C., 224.

444—RB, XII, 167:

To mount the scaffold-steps, Guido was last

P., 213: "The first who was executed * * * and the last, Franceschini."

445—RB, XII, 173-91:

As he harangued the multitude beneath,
He begged forgiveness on the part of God,

And fair construction of his act from men,
Whose suffrage he entreated

With his soul, —
Suggesting that we should forthwith repeat

A *Pater* and an *Ave*, with the hymn

Salve Regina Celi, for his sake.

Which said, he turned to the confessor, crossed

And reconciled himself, with decency,

* * * * *

* * * then rose up, as brisk

Knelt down again, bent back, adapted neck,

And, with the name of Jesus on his lips

Received the fatal blow.

The headsman showed

The head to the populace.

Cf. C., 224.

446—RB, XII, 198-202:

B., 213:

"He wore the dress he did the murder in,
That is, a *just-a-corps* of rus-set serge,

Black camisole, coarse cloak
of baracano,"

White hat, and cotton cap"

Cf. V, 1565; VI, 2001; VIII, 1315-7.

447—RB, I, 361:

"All Rome for witness." The second letter says (B., 190): "All Rome was there, as you may believe." P., 213, also speaks of the "great concourse of people." C., 225, says: "Rome has never seen an execution with a greater concourse of people."

448—RB, I, 362-3:

Remonstrant in its universal grief,
Since Guido had the suffrage of all Rome.

The second letter (B., 190) says: "He has been pitied by all gallant men." Cf. RB, XII, 275-6.

449—RB, XII, 272:

Nor shall the shield of his great House lose shine

B., 190: "And his House has lost nothing in the matter of reputation."

450—

The letter of Arcangeli given (RB, XII, 239-88) is merely a close, but humorous paraphrase of the letter of Arcangeli (B., cxxxv). The original is placed side by side with Browning's version below.

The real letter (B., cxxxv):

Tardi giunsero

le giustificazioni invitatem da
V. S. Illma

à prò della b. m. (benedetta
memoria)

del Sig. Guido Franceschini,
poichè havendo determinato

La Congregazione di Mons.
Governatore

che detta Sig. Guido

foste Reo di morte

nonostante le Ragioni deditte

a suo favore

a gran fatiga dalla medema

ottenni qualche dilatatione per

il suo clericato da me allegato

al quale effetto fu spedita staffetta

in Arezzo;

me giudicando expediente

La Santità di Nostro Signore

il non differire

He wore the same garb as
when he had committed the crime;

that is, a *giustacuore* of brown
serge,

black *camicivola*, coarse cloak
of *baracano*,

white hat and *cap di cotone*

Cf. V, 1565; VI, 2001; VIII, 1315-7.

451—RB, XII, 273:

Remonstrant in its universal grief,

Since Guido had the suffrage of all Rome.

The second letter (B., 190) says: "He has

been pitied by all gallant men." Cf. RB, XII, 275-6.

452—

Nor shall the shield of his great House lose shine

B., 190: "And his House has lost nothing in the matter of reputation."

453—

The letter of Arcangeli given (RB, XII, 239-88) is merely a close, but humorous paraphrase of the letter of Arcangeli (B., cxxxv). The original is placed side by side with Browning's version below.

The real letter (B., cxxxv):

The letter of the Poem:

Late they arrived, too late,
egregious Sir,

Those same justificative points
you urge

Might benefit His Blessed
Memory

Count Guido Franceschini now
with God;

Said in the Court,—to state
things succinctly,—stated

The Congregation of the Gov-
ernor,

Having resolved on Tuesday
last our cause

I' the guilty sense, with death
for punishment,

Spite of all pleas by me deducible

In favour of said Blessed
Memory,—

I, with expenditure of pains
enough,

Obtained a respite, leave to
claim and prove

Exemption from the law's
award,—alleged

The power and privilege o' the
Clericale;

To which effect a courier was
despatched,

Brought an answer from Arezzo
saying,

The Holiness of our Lord
the Pope (prepared)

Judging it inexpedient to post-

pone

*l'esecuzione della sentenza già destinata
hebbe di bene con Chirografo
particolare
derogare ad ogni Privilegio*

*Clericale, che gli fosse potuto
compiere;*

et alla minorità rispetto à

*Francesco di Pasquino
uno de complici;*

*si che oggi è stata eseguita
la sentenza contro tutti
cinque,
colla sola distinzione nel genere
della morte, havendo il Sig.
Guido
terminata la sua vita colla de-
collazione;*

*Servitù à consolazione à suoi
Parenti, et Amici
l'esser stato commiserato*

*da tutti gli huomini d'onore, e
da i buoni,
ancorche, confessando la mia
debolezza non posso negare di
sentire un infinito Rammarico,
attribuendo il tutto al non
haver
io capito rappresentare le sue
solide Ragioni.*

*Compensi il Sig. Iddio questo
funesto accidente
alle di lui Cara, et ai tutti i
suoi Amici
con copiosa felicità,
e desiderio della continua-
zione di
suoi comandi, mi raffermo per
sempre*

451—RB., XII, 363:

And want both Gomez and the marriage-case,

Evidently suggested by the words in the third letter (B., 191): "I may serve your Excellency in the matrimonial case and in the other of Gomez." Cf. RB., XII, 657.

452—RB., XII, 367-8:

*"Adverti supplico humiliter quod." Taken
from B., xii.*

453—RB., XII, 446-9:

*That barefoot Augustinian * * *
* * * presented to propose yesterday*

This sermon is purely fictitious so far as the Franceschini case is concerned, but the Poet may

The execution of such sentence passed,
Saw fit, by his particular
chirograph,
To derogate, dispense with
privilege,

And thereby at any hurt accrue-
ing to Mother Church through
damage of her son:

Also, to overpass and set aside
That other plea on score of
tender age,

Put forth by me to do Pasquino
good,

One of the four in trouble with
our friars—
So that all five, to-day, have
suffered death

With no distinction save in
dying.—he,

Decollate by mere due of privi-
lege,

The rest hanged decently and
in order. Thus

Came the Count to his end of
gallant man,

Defunct in faith and exem-
plarity;

Nor shall the shield of his
great House lose shine

Thereby, nor its blue banner
blush to red.

This, too, should yield sustain-
ment to our hearts—

He has commiseration and re-
spect,

In his decease from universal

Rome,

*Quantum est hominum venusti-
orum;*

The nice and cultivated
everywhere:

Though, in respect of me his
advocate,

Nevertheless I groan o'er my

debility,

Attribute the untoward event
o' the strife

To nothing but my own crass
ignorance

Which failed to set the valid
reasons forth,

Find fit excuse; such is the
fate of war!

May God compensate us the
dreadful blow,

Or future blessings on his

family,

Whereof I lowly beg the next

commands;

Whereto, as humbly, I confirm

myself . . . "

have used to some extent passages from medieval sermon literature which he had read.

454—RB., XII, 715-6:

*I've a second chance
Before the self-same court o' the Governor*

This final suit as to Pompilia's restoration to good name by decree of court was indeed before the same court of the Governor as the runaway and murder cases. Cf. B., 202, and Note 364.

455—RB., XII, 708:

Who but I institute procedure next

Not Bottini, but Gambi instituted procedure against the good fame of the dead Pompilia (B., 202). Cf. RB., I, 1174.

456—RB., XII, 752-67:

The Instrument

Is plain before me, print that ends my Book

With the definitive verdict of the Court,

This is the last pamphlet of the Book, entitled *Instrumentum Sententia Definitivæ* (B., cclix), in which the court, presided over by Marcus Antonius Venturinus, *locum tenens* (B., 203) absolutely clears the reputation of Pompilia by a formal pronouncement of court. B., 204: "Proof is not established as regards the pretended adultery, and therefore the memory of the same Francesca should be and is entirely restored to her pristine reputation.

457—RB., XII, 757-67:

B., cclix or 202:

*"In restitutione of the perfect
fame*

*Of dead Pompilia, quondam
Guido's wife,*

*And warrant to her represen-
tative*

Domenico Tighetti, barred

tercenary,

*While doing duty in his guard-
ianship,*

*From all molesting, all dis-
quietude,*

*Each perturbation and vexa-
tion brought*

Or threatened to be brought

against the heir

*By the Most Venerable Con-
vent called*

Saint Mary Magdalene of the

Conventuates

I' the Corso;

*Latae pro reintegratione famae,
&*

*existimationis quondam Fran-
cescae Pompiliae, alim Uxoris
quondam Guidonis Frances-
chini de Arctio;*

necnon abdolutorie ad favorem

*D. Dominici Tighetti uti haere-
ditatis preficitur eiudem Franciae*

Pompiliae

ab omnibus Inquistitionibus,

and molestationibus,

*vexationibus, & perturbation-
ibus illatis,*

& inferri communatis

a Venerabilis Monasterio

*S. Mariae Magdalena Conver-
tarium*

ad Cursum

458—RB., VIII, 130-5:

This deliberation over phrases for expressing the idea has a minuter irony when studied in the light of the Book. His sneer at the first phrase as commonplace has additional point when we see it was the word of Gambi, one of Arcangeli's opponents (B., lxi). The expression "*taedas jugales celebrare*" is found in Catullus, 64, 302. *Connubio stabili sibi junxit* is indeed "free from modern taint," as it is adapted from *Aeneid*, I, 73. *The nups erat sinistris avibus* in which he finally rests is the opening phrase of the first argument of the real Arcangeli (B., ix).

459—RB., VIII, 165-6:

*Ha, my Bottini, * * **

How will he turn this and break Tully's pate?

That is, what wretched Latin he will write. This sneer has the more point when we know

that the sentence sneered at is taken from one of Bottini's arguments (B., 142); hence his contempt in "Stupidly put." And the next Latin quotation gives his own words from his third argument (B., 87).

460—

The following notes illustrate in detail the Poet's use of the Latin of the Book in the monologue of Arcangeli. That Browning's modifications may be seen at a glance, the two versions are placed in parallel columns; the Book in the left-hand column, *The Ring and the Book* (Book VIII) in the right-hand column. To facilitate the comparison, italics in the Latin of the Book will indicate words the Poet has omitted in his version, and italics in the Latin of the Poem will indicate words which are somewhat changed from the Book.

461—

| | |
|-----------------|---------------------|
| B., lxi, or 50: | line |
| in uxorem duxit | 130 duxit in uxorem |

462—B., lxi or 50:

| | |
|--------------------------------|------------------------------|
| facti ideo series its se habet | 140 its se habet ideo series |
| | facti |

463—

These are the actual opening words of Arcangeli's first argument (B., ix or xo):

| | |
|----------------------------|--|
| nups erat sinistris avibus | 142 nups erat, heu sinistris
avibus |
| Dominus Guido Franchini, | 144 Dominus Guido, nobili |
| nobili generi ortus | generi ortus, |
| Francesca Pompiliae | 145 Pompiliae. |

464—

These words of Bottini, at which Arcangeli sneers, are found (B., clxxii, 142):

| | |
|--------------------------------|-------------------------------|
| existimanda sit qualitas con- | 167 existimandum |
| fessioni adjecta, | |
| quod maritus designaverit ele- | 168 quod Guido designaverit |
| mentia | elementa |
| d. epistola, que | 169 dicta epistola, que fuer- |
| | in |
| super inducto ab ea calamo, | 170 superinducto ab ea ca- |
| | lamo |
| fuerint atramento nota, | 171 nota atramento |
| quia ipsa scribere nesciebat. | 172 quia ipsa scribere nes- |
| | ciebat |

465—

The following is the reply of Arcangeli (B., civ or 87) to the above point made by Bottini:

| | |
|--------------------------------|---|
| inianis est responsio, | 173 inianis est responsio |
| quod singula elementa dicta | 177 quod singula elementa |
| prima epistola | epistola |
| fuerant prius designata per D. | 179 fuerant per eum prius |
| Guidonem, | designata |
| et deinde superinducto per | 181 et deinde superinducto |
| cam calamo | calamo |
| efformata, ut ipsa assertit | 183 per eam, efformata, ut
ipsa assertit |

466—

This is found in one of the marginal annotations to Pompilia's cross-examination (B., lxxxvi or 72):

| | |
|-----------------------------|----------------------------------|
| clus vir lineabat epistolam | 186 vir eclus lineabat epistolam |
|-----------------------------|----------------------------------|

467—B., lxxi or 59:

| | |
|-------------------------------|----------------------------|
| fatetur cam conscripsisse | 188 fatetur cam scriptisse |
| ut inquisito obtemperaret | 190 ut viro obtemperaret, |
| | apices |
| eo designante apices, ipsaque | 192 eo designante, ipsaque |
| calamum | calamum |
| super inducente | 193 super inducente |

468—B., cxxlviii or 195:

| | |
|---------------------------------------|--|
| ita pariter optime ostendit epistolam | 194 ita pariter
196 epistolam ostendit, me- |
| non voluntarie, sed coacte scriptam | dius fidius |
| | 198 non voluntarie sed coacte |
| | scriptam |

469—

The expression *ignea arma* for firearms is very common in the Book. The passage which seems closest to this fragment is found (B., lxiv or 53):
 francischinus in sequendo 205 Guido Pompiliani
 uxorem armis igneis munitus 207 armis munitus ignicis per-
 sequens

470—

The following alternative term for firearms is used by Bottini (B., clxxxiii or 150):

| | |
|-------------------------|----------------------------|
| arma sulphurea gestante | 208 arma sulphurea gestans |
|-------------------------|----------------------------|

471—

The expression for pistol at which Arcangeli sneers is used by Lamparellus (B., cxxvi or 194):
igneo breviori sclopulo eam 210 armatus breviori sclopulo
 persequens

472—B., cxiv or 96:

| | |
|--------------------------------------|---|
| ense viatorio sollempnido instructus | 214 ense sollempnido viatorio
215 instructus |
|--------------------------------------|---|

473—

This point of law and quotation are made by Arcangeli (B., xi or 11):

| | |
|------------------------------|-------------------------------------|
| ultra quod hic non agitur | 442 ultra quod hic non agitur |
| de probatione Adulterii | 444 de probatione adulterii |
| ad irrogandam ponam, | 446 ad irrogandam ponam |
| sed ad effectum | 448 sed ad effectum |
| excusandi | 449 excusandi |
| Ociosorem, | 450 ociosorem |
| et ad illius defensionem | 451 et ad illius defensionem |
| quo casu leviores probations | 453 quo casu <i>levior probatio</i> |
| exuberanter | 454 exuberanter |

474—B., cxxxvii or 113:

| | |
|---------------------------|-------------------------------|
| adeo ut qui honorem suum | 522 adeo ut qui honorem |
| spernit, | spernit |
| et non curat recuperare | 524 et non recuperare curat |
| se uliscendo | 526 se uliscendo |
| nil differat a bellus | 527 nil differat a bellus |
| * * * | 528 * * * |
| Quinimum irrationalib[us] | 529 quinimum irrationalib[us] |
| ipsamet bellus | 530 ipsamet bellus |
| reputatur | 531 reputatur |

475—RB., VIII, 587-681:

Drawn almost entirely from the actual language of various parts of the Book. Even the English passages are usually close paraphrases of the Italian original behind them. The Poet frequently follows his text so closely as to use etymological equivalents wherever possible.

476—

The following quotation from St. Jerome, which the Poet gives partly in Latin and partly in English, is found (B., cl or 123):

| | |
|---------------------------------|-------------------------------|
| ubi honor non est | 587 ubi honor non est |
| ibi contemptus est: ubi con- | 588 ibi contemptus est; and |
| temptus; | where contemptus; |
| ibi frequens iniuriae: ubi ini- | 589 ibi iniuria frequens; and |
| uria; | where that; |
| ibi indignatio: ubi quies | 590 * * * ibi indignatio; and |
| | where the indigna- |
| Nulla: ubi quies non est, | 591 tion, ibi quies |
| | Nulla: and where there |
| ibi | 592 is no quietude |
| mens a proposito saepe deicitur | 593 ibi |
| | 595 mens a proposito saepe |
| | deicitur |

477—

The following quotation and citation from Gregory is drawn from B., cxxxvii or 113:

| | |
|--------------------------------------|---|
| cum difficilis sit
iram cohibere, | 597 quam difficilis sit
iram cohibere |
| quam miracula facete; | 598 quam miracula facete; |
| ut inquit D. Gregor. dial. I. | 599 So Gregory smiles in his
First Dialogue. |

478—

The following magniloquent passage from the first Anonymous Writer is ridiculed by his opponent later on. Browning merely translates it and fits it to blank verse (B., cli or 124):

| | |
|--|---|
| e in vero un' anima ingenuo, e
che | 601 * * * the ingenuous
soul, the man |
| fa stima del suo honore, e della
sua riputazione; | 602 Who makes esteem of
ogni quel volta resta offeso |
| ogni quel volta e' cotanto
sensibile, e cotanto delicata, | 603 Whenever honour' and
repute are touched, |
| ogni quel volta
giunge al termine di furore, e
della disperazione, | 604 Arrives at term of fury
and despair, |
| perduto ogni lume di ragione, | 605 Loses all guidance from
the reason-check: |
| come delirante, e frenetico, | 606 As in delirium or a
frenzy-fit, |
| non puote appagarsi, | 607 Nor fury nor despise he
satiates,—no, |
| o' meno se giungesse a econ-
volgere, | 608 Not even if he attain the
impossible, |
| quando il fosse possibile, | 609 O'etturmo the hinges of
the universe |
| i Cardini dell' Universo
per annichilare | 610 To annihilate—not who so
caused the smart |
| non solamente gli Autori, | 611 Soli the author simply
of his part |
| ma ancora il luogo, e la
memoria | 612 But the place, the mem-
ory, <i>vituperi.</i> |
| de suoi scorsi, e de suoi
vituperi, quia | 613 O' the shame and scorn:
quia, * * * |
| zelus, et furor viri | 617 zelus et furor viri |
| non parcer | 618 non parcer |
| in die vindictae, | 619 in die vindictae |
| nec acquesitet | 620 nec acquesitet |
| cuiuscumque precibus, nec sus-
cipiet | 621 cuiuscumque precibus,—nec
suscipiet |
| pro redempzione | 622 pro redemptione |
| dona plurius. | 623 dona plurius. |

479—

Notice the literality of the production of the citation of Solomon included in the midst of the preceding passage (B., cli or 124):

come parla in questo proposito 613 "says Solomon,

lo Spirito santo per bocca di Salo-
mone

nei Proverbi al 6. in fine

Cf. RB., I, 229.

480—

The quotation from the letters of St. Bernard follows the above in the text of the Anonymous Pamphlet (B., cli or 124):

al che molte bene conferisce 626 Whereto, as strangely
quello, che dottamente consentaneous here,
scrive San Bernardo in Epistol.

ad Robert. Nepot. suum in 628 To Robertulus, his
principi.

Dolor quippe nimius non de- 629 Dolor quippe nimius non
litterat.

non vercundatur,

non consulti rationem,

non metuit dignitatem,

damnum, legi non obtemperat,

fudicio non acqutescit, modum

ignorat, et ordinem

481—

The account of Samson follows the above passages immediately (B., cli or 124) in the Anonymous Pamphlet. The second Italian Pamphleteer sneers at this passage near the close of his own Pamphlet (p. 183).

Sansone * * *
soffri con animo intrepido la
privazione degli occhi, e altre dolenti
sciagure,

ma quando si vide destinato
a servire
di trastullo nei luoghi pubblici,
e che in quelli udiva le de-
risioni, e le heffe del Popolo,
a'cease lo sdegno nel suo
petto, con impeto tale,
che tutto smarie, tutto furie

moriatur, disse, anima mea cum Philistini,

e data una scotta alle Colonne,
che sostenevan il Palazzo,
lo riduse in ruina,

multosque plures interfecit
mortiens,
quam vivens occidetur.

Samson * * *
Blinded he was, * * *

Intrepidly he took im-
prisonment,
Gyves, stripes and daily
labour at the mill;

But when he found him-
self, i' the public place,

Destined to make the
common people sport,
Distrain himselfed up with
such an impetus,

I' the breast of him that,
all the man one fire,
Moriat, roared he ***

Animi mea, with the
Philistines!

So, puffed down pillar,
root, and death and all,

Multosque plures inter-
fecit, ay mortiens,
quam vivens occidetur.

Our Lord Himself, made
all of mansuetissimo,
foue mansuetissimo,
e havesse somma sofferenza
nel ricevere,

gli obbrobrii, e gli strapazzi
senza mai lamentarsi, nientedi-
meno quando si senti
toccato nell' honore, riapose

Honorem meum nemini dabo;

* * * * *
e' certo,
che chiunque

apprezza la reputazione, e
l'honore,
stima molto meno il morire
huomo honorato

sotto una mannaia, che vivere
per molti secoli
in faccia al mondo con ver-
gogna, e dishonore

And certainly the ex-
ample so hath wrought,
That whosoever, at the
proper worth,

Apprises worldly honour
and repute,

Esteems it nobler to die
honored man

Beneath Mannaia, than
live centuries

Disgraced in the eye o'
the world.

482—RB., VIII, 660-73:

This pseudo-saying of Christ (cf. Note 393)
and the inclosing text and comment are taken
directly from the second Anonymous Pamphlet
(B., cli or 124).

Christo medesimo, ancorche
fosse mansuetissimo,
e havesse somma sofferenza
nel ricevere,

gli obbrobrii, e gli strapazzi
senza mai lamentarsi, nientedi-
meno quando si senti
toccato nell' honore, riapose

Honorem meum nemini dabo;

* * * * *
e' certo,
che chiunque

apprezza la reputazione, e
l'honore,
stima molto meno il morire
huomo honorato

sotto una mannaia, che vivere
per molti secoli
in faccia al mondo con ver-
gogna, e dishonore

Expedit mihi magis mori
quam ut gloriam meam quis
evacuet

Apostol. epist. I. ad Corinth.
cap. 9.

Et D. Ambros. lib. 3. etc.

Saint Ambrose makes a
comment, etc.

Expedit mihi magis mori
quam ut gloriam meam quis
evacuet

See, ad Corinthenses:
whereupon

Saint Ambrose makes a
comment, etc.

Browning waggishly makes Arcangeli forget
this citation (lines 681-3).

| | | | | |
|---|--|--------------------------------------|---|-----------------|
| 484—B., xxxi or 26: | quod si maritus de adulterio | 756 quod si maritus de adulterio non | sed remisit | 930 sed remisit |
| uxoris non conqueratur | 757 conquereretur | ad Areopagum | 931 ad Areopagum | |
| præsumitur Leni, | 758 presumitur leno | Sapientissimum Iudicium | 932 sapientissimum Iudicium | |
| 485—B., xxxii or 26: | cum iudicat | Cetum, | 933 catum | |
| prosequeatur | 765 prosequetur | ubi, cognito de Causa, | 935 ubi, cognito de causa | |
| illius Causam | 766 Guidonis causam | responsum fuit, | 936 responsum est | |
| ipso accidit, | 767 accidit ipso | ut ipsa, et Accusator | 937 ut ipsa et accusator | |
| quod moverit risum, et cachin- | 768 quo risum moverit et | post centum Annos | 938 redirent, | |
| noe | 770 feci in omnibus | et sic | 939 post centum annos | |
| feci in omnibus | 771 etiam sensatis et cordatis | duplici Parricido Rea, | 940 duplice patricido rea | |
| etiam sensatis, et cordatis | 772 etiam sensatis et cordatis | quamvis etiam Innocentem | 941 quamvis etiam innocentem | |
| viris; | 773 ipsimet in iudicibus | occidisset, | 942 occidisset | |
| non tamen dicam | 774 non tamen dicam | undequeaque | 943 undequeaque | |
| in ipsismet iudicibus. | | evasit Impunis, ut refert | 947 evasit impunis, See the case at length | |
| 486—B., cxxxiii or 110: | | Valer. Max. Dicit. factor. | 948 in Valerius, fittingly styled Maximus. | |
| Asserunt enim unanimitate | 783 Asserunt enim unanimitate | | | |
| predicti DD., | 784 doctores | | | |
| quod mariti | 785 quod mariti | Similiter Uxor, qua mandaverat | 951 Similiter uxor qua mandaverat | |
| reputantur viles, et cornuti | 786 vilis, cornuti reputantur | Homicidium Viti ob iustum | 953 homicidium viri | |
| si propriis manibus | 788 si propriis manibus | ex denegatione debiti | 954 ex denegatione debiti | |
| non sumunt | 789 non sumunt | matrimonialis | 956 matrimonialis | |
| vindictam, sed | 790 vindictam, bat * * | fuit pecuniaria multa | 957 fuit pecuniaria multa | |
| expectant illam fieri | 791 expectant illam fieri | punita, et ad temporalem | 959 punita, and ad poenam | |
| per iudices, qui summopere | 792 per iudices, qui summo- | permanentiam | 960 temporalem | |
| rident, | 793 pete rident | in Monasterio | 961 in monasterio. | |
| et cachinnantur. | 794 et cachinnantur. | | | |
| 487—B., cxxxiii or 110: | | | | |
| deliquerit enim, | 795 deliquerit enim | quia semper | 1017 quia semper | |
| ut vulgi, et Doctorum Cen- | 797 ut vulgi et doctorum | presumitur, | 1018 presumitur | |
| suram | 798 censuram | quod capiat | 1019 quod capiat pater | |
| evitaret, | 800 et sic ne istam quoque | bonum consilium pro | 1020 bonum consilium pro | |
| et sic ne ammiso honori istam | 801 ignominiam | filio | | |
| quoque | 802 ammiso honori superad- | ex instincitu | 1022 ex instincitu | |
| Ignominiam superadderet | 803 deret | Paterno amoris, | 1023 paternis amoris | |
| | | quam confidentiam | 1024 quam confidentiam | |
| 488—B., cxxxiv or 111: | | non habet | 1025 non habet | |
| malus modus eam occidendi | 822 malus modus occidendi | de Viro | 1026 de viro | |
| 489—B., cxxxiv or 111: | | | | |
| nimis dolose | 831 nimis dolose | | | |
| operatum fuisse | 832 fuisse operatum | | | |
| 490—B., xix or 18: | | | | |
| qui, ut fraudarent | 875 qui ut fraudarent | 1017 quia semper | | |
| legitime vocatos | 876 legitime vocatos | 1018 presumitur | | |
| ad Fideicommissum | 877 ad fidem commissum | 1019 quod capiat pater | | |
| partum <i>illusterrimum</i> supposuer- | 878 partum supposuerunt | 1020 bonum consilium pro | | |
| unt | | filio | | |
| immocores Reos factos esse | 879 immocores Reos factos | ex instincitu | | |
| ultimi supplicii | 880 esse | Paterno amoris, | | |
| | 881 ultimi supplicii | 1023 paternis amoris | | |
| 491— | | 1024 quam confidentiam | | |
| The following point as to the excuse of <i>honoris causa</i> is given by Arcangeli (B., xxii or 19) and illustrated by the "nice decision of Dolabella" (Cf. RB, I, 230): | 1025 non habet | 1026 de viro | | |
| non semel | 906 non semel | | | |
| in contingencia facti | 907 in contingencia facti | | | |
| evaserunt impunes | 908 impunes evaserunt | | | |
| qui | 909 qui | | | |
| iusto dolore moti | 910 iusto dolore moti | | | |
| apposuerunt manus etiam | 911 apposuerunt manus | | | |
| in innocentes? | 912 in innocentes? | | | |
| Mulier enim quadam Smirne | 914 Mulier Smirne quadam | | | |
| Virum, et Filium ex eo con- | 916 virum et filium ex eo | | | |
| ceptum | 917 concepimus | | | |
| interfecerat, ex quo | 918 interfecerat, ex quo | | | |
| Vir perdiditer filium suum | 919 vir filium suum perdi- | | | |
| primi matrimoniis, | 920 derat | | | |
| accusata deinde | 921 matrimonii primi | | | |
| apud Dolabellam, <i>Proconsulem</i> , | 922 deinde accusata | 1062 delatio armorum | | |
| neque deinde credens | 923 apud Dolabellam | contra formam Constitutionis | 1063 contra formam constitu- | |
| contaminavit liberate, | 924 nec dubius erubens | Alexandri VIII. | 1064 tions, of Pope Alexander's blessed memory. | |
| neque iusto dolore impulsam | 925 contaminavit liberare | | | |
| condemnare voluit; | 926 volunt. | | | |
| | 927 nec condemnare | | | |
| | 928 justo dolore impulsam | | | |
| | 929 | | | |
| 492— | | | | |
| The next citation from Cyriacus is made by Arcangeli at the close of his first argument (B., xxii or 20): | | | | |
| Cetum, | 933 catum | | | |
| ubi, cognito de Causa, | 935 ubi, cognito de causa | | | |
| responsum fuit, | 936 responsum est | | | |
| ut ipsa, et Accusator | 937 ut ipsa et accusator | | | |
| post centum Annos | 938 redirent, | | | |
| redirent, | 939 post centum annos | | | |
| et sic | 940 et sic | | | |
| duplici Parricido Rea, | 941 duplici patricido rea | | | |
| quamvis etiam Innocentem | 943 quamvis etiam innocentem | | | |
| occidisset, | 945 occidisset | | | |
| undequeaque | 946 undequeaque | | | |
| evasit Impunis, ut refert | 947 evasit impunis, See the case at length | | | |
| Valer. Max. Dicit. factor. | 948 in Valerius, fittingly styled Maximus. | | | |
| 493— | | | | |
| The following distinction as to the right of father and husband to kill a shameless daughter or wife is made by Bottini (B., cxcvii or 160): | | | | |
| qui semper | 1017 quia semper | | | |
| presumitur, | 1018 presumitur | | | |
| quod capiat | 1019 quod capiat pater | | | |
| bonum consilium pro filio | 1020 bonum consilium pro filio | | | |
| ex instincitu | 1022 ex instincitu | | | |
| Paterno amoris, | 1023 paternis amoris | | | |
| quam confidentiam | 1024 quam confidentiam | | | |
| non habet | 1025 non habet | | | |
| de Viro | 1026 de viro | | | |
| 494— | | | | |
| The following sneer of Arcangeli at his opponent is based on the same phrase with other verbal forms found at B., cxxxvi or 113, and cxxix or 186: | | | | |
| sit in plenitudine intellectus | 1040 in plenitudine intellectus es? | | | |
| 495—B., xxxii or 26: | | | | |
| quod contigisse in praesenti | 1141 quod contigisse in praesenti casu | | | |
| casu | 1142 manibus palpatum est | | | |
| 496— | | | | |
| The following passage is found in variant forms in several passages (Note 433), but the present quotation is reproduced exactly from B., lxi or 53: | | | | |
| delatio armorum | 1162 delatio armorum | | | |
| contra formam Constitutionis | 1163 contra formam constitutionis, of | | | |
| Alexandri VIII. | 1164 Pope Alexander's blessed memory. | | | |
| 497— | | | | |
| This rather pompous apology is made twice (B., xlivi or 34; cii or 85). | | | | |
| sed parcat mihi tam eximius | 1172 sed parcat mihi tam | | | |
| Doctor | eximius vir | | | |

498—

This claim of Guido that he did not order the assassins to kill the Comparini, but merely to mutilate them (cf. Note 526), was made on his first examination, but seems to have been abandoned by him when he was subjected to the torture of the vigil. The words *ut Doctorum utar verbis* are transferred from their place in the midst of the following passage to line 1576 of this monologue (B., xxxv or 28. Cf. B., 20):

| | |
|-------------------------------|-----------------------------|
| solummodo fassus ful- | 1221 solummodo fassus est |
| deditis mandatum, ut Doc- | 1222 deditis mandatum |
| torum uar- | |
| verbis, ad strislandum dictam | 1223 ad strislandum, dicam, |
| sum Uxor tantum | 1225 uxorem tantum |

499—B., xxix or 24:

| | |
|---------------------------------|------------------------------|
| ex causa abscissionis genital- | 1240 ex causa abscissionis |
| ium de facto secundum | 1241 <i>parum;</i> |
| quia tempore la facientes repu- | 1241 quia nampē id facientes |
| tantur | repudiantur. |

inimici nature
The change of *quia* to *qui* is probably an accidental error rather than a conscious modification.

500—B., xviii or 17:

| | |
|---------------------------|-----------------------------|
| obiectum funditus corruit | 1248 objectum funditus cor- |
| | ruit |

501—B., lxvi or 54:

| | |
|------------------------------|-----------------------------|
| in domo, ac habitatione pro- | 1256 in domo ac habitatione |
| pria | propria |

Cf. Note 417.

502—

The following claim as to Guido's right to secure his wife's departure from the monastery for the purpose of killing her is made by the real Arcangeli (B., xviii or 16. Cf. Note 291):

| | |
|-------------------------------|------------------------------------|
| nam quicquid sit | 1283 nam quicquid sit |
| an de consensu ipsius Domini | 1284 an de consensu nostro |
| Guidonis | |
| educa esse et | 1285 a monasterio |
| a Monasterio, de quo nullum | 1286 educta esse et |
| verbis subsumens in Processu. | |
| potius id dissimilare, | 1287 <i>Potius id dissimilare;</i> |
| ut aditum habere | 1289 ut aditum habere |
| potuisse | 1291 potuisse |
| ad eam occidendum | 1292 ad eam occidendum |

503—The following passage contains the only unmistakable error of Browning in the transfer of the book-Latin to his Poem. "via" for "ira" is doubtless a mistake in reading his own written notes (B., xxxiv or 28):

| | |
|------------------------------|-------------------------------|
| in quibus Rex Regum, et dom- | 1296 in quibus assistit Regum |
| <i>ius</i> | Rex |
| dominantum assistit; per es- | 1297 per essentiam |
| sentiam, | |
| et nihilominus delinquens in | 1298 et nihilominus in eis |
| eis | |
| ex iusta Ira, et dolore | 1299 ex justa via delinquens |
| excusatur | 1301 excusatur |

504—B., lxvi or 54:

| | |
|-----------------------------|-------------------------------|
| mutatione vestimentorum, | 1318 mutatione vestium |
| quo casu Homicidium dicitur | 1320 homicidium ex insidiosis |

committit ex Insidiis.

505—B., xxxii or 26:

| | |
|--------------------------------|---------------------------|
| ut commodius, et tutus de illa | 1325 de illa ut vindictam |
| | sumerer |

vindictam sumeret

| | |
|--|-------------------------|
| | 1327 commodius * * * et |
| | tutus |

506—B., lxvi or 54:

| | |
|-----------------------|----------------------------|
| Francisca erat | 1339 our wife reposed |
| sub potestate Iudicis | 1340 sub potestate judicis |

507—B., lxxviii or 66:

| | |
|--------------------|------------------------------|
| accedit ad | 1380 accedit ad |
| exasperandam pœnam | 1381 exasperationem criminis |

508—B., cxxxix or 114:

| | |
|------------------------------|-----------------------------|
| et cum agatur de pauperibus, | 1531 et cum agatur de pau- |
| | peribus |
| cereratis, | 1532 cereratis |
| in eorum causis | 1533 in eorum causis |
| pietas | 1534 pietas |
| triumphare debet, quia ipsi | 1535 triumphare debet, quia |
| sunt | ipsi sunt |
| thesaurus Christi | 1537 thesaurus Christi |

509—B., xxxvii or 29:

| | |
|----------------------|---------------------------|
| ista sua opinio est | 1558 opinio |
| multum Cordi tenenda | 1559 multum tenenda cordi |

510—B., xli or 33:

| | |
|------------------|-----------------------|
| non dicuntur | 1562 non dicuntur |
| Mandatariorum | 1563 mandatoriorum |
| sed Auxiliatores | 1564 sed auxiliatores |

511—B., xliv or 34:

| | |
|---------------------------------|---------------------------------|
| adeo honoris causa est efficax, | 1566 adeo honoris causa est |
| <i>ut</i> | efficax |
| non solum | 1567 non solum |
| se diffundat | 1568 se diffundat |
| in Mandatariorum simplices, | 1570 in mandatoriorum simplices |
| sed etiam in Mandatariorum | 1572 sed etiam assassinii |
| qualificatos | 1573 qualificatos |
| Assassinii qualitate | |

512—B., clxxxii or 150:

| | |
|---------------------|--------------------------|
| quo nihil absurdius | 1633 quo nihil absurdius |
| excogitari potest | 1634 excogitari potest |

513—

The long peroration, over which the Arcangeli of the Poem is laboring (RB., VIII, 1637-1736), is taken bodily from B., cxii or 103, where it is the peroration of the last and most important of the arguments of the real Arcangeli.

| | |
|--------------------------------|------------------------------|
| Cacterum | 1635 cacterum |
| enixe supplicio, | 1637 enixe supplico |
| ut illustrissimo Domino meo | 1639 ut dominis meis |
| benigna fronte, | 1640 benigna fronte |
| ac etiam oculis | 1641 ac etiam oculis serenis |
| perpendere placet, | 1642 perpendere placet |
| quod Dominus Guido | 1643 quod dominus Guido |
| occidit, | 1644 occidit |
| ut clavis Honor tumulatus | 1645 ut ejus honor tumulatus |
| in infamia | 1647 in infamia |
| resurget, | 1648 resurget |
| Occidit uxorem, | 1649 Occidit uxorem |
| qui illi fuit | 1650 qui illi fuit |
| opprobrio, | 1651 opprobrio |
| et illius Genitores | 1652 et genitores |
| qui postposita omni verecundi- | 1653 qui postposita verecun- |
| dia | dia |
| filiam repudiarunt, | 1655 filiam repudiarunt |
| et declarare non | 1656 atque declarare non |
| erubuerunt | 1657 erubuerunt |
| esse Meretricis | 1658 esse meretricis genitam |
| genitam, | 1659 esse |
| ut ipse dehonestaretur | 1660 ut ipse dehonestaretur |
| cuius mentem | 1661 cuius mentem |
| perverterunt, | 1663 perverterunt |
| et ad illicitos Amores non | 1664 et ad illicitos amores |
| pelleixerunt dumtaxat | 1665 dumtaxat pelleixerunt |
| sed vi obdientie | 1667 sed vi obdientie |
| filialis | 1668 filialis |
| cogerunt | 1669 cogerunt |
| Occidit. | 1670 Occidit |
| ne scilicet amplius in | 1671 ne scilicet amplius in |
| dedecore | dedecore |
| viveret | 1673 viveret |
| Consanguineus invitus, | 1674 invitus consanguineis |
| a Nobilibus | 1675 a nobilibus |
| relicetus ab Amicis, | 1676 relicetus ab amicis |
| ab omnibus derisus. | 1678 ab omnibus derisus |
| Occidit | 1680 occidit |

| | | | | |
|---|------|--|--------|--|
| in urbe
nempe, quæ alias fuit spectata | 1682 | In Urbe
nempe quæ alias spec-
tata est | 1682 | Futor minister: arms. Ver., A. I, 150, quoted also B., 124.
Unde mihi lapidem unde sagitis. Hor., Sat. II, VIII, 116. |
| Nobilium Matronam
abluere maculas Pudicitia | 1684 | matronam nobilem | 1685 | 1200 non vir nivalis. A medieval philosophical term
objectum funditus corrui. A medieval term in logic |
| proprio sanguine, | 1687 | abluere pudicitia macu-
las | 1687 | 1210 baud passibus æquis. Probably suggested by Ver., A. I,
724, non passibus æquis |
| qua ipsa invicta, et reluctante filius Regis impedit, mortis propria
alterius culpam, et violentiam explando Valer. Maxim., lib. 6,
cap. 1, num. 1. Tit. Liv., lib. 3, Histor. | 1688 | ta sanguine proprio | 1685-7 | 1215 ne sit marita quæ rotundioribus onusta mammis—baccis
ambulet. Hor. Epodes 8, 113. |
| Et quæ vidit
Patrem undequeque | 1689 | qua vidit
patrem undequeque | 1689 | 515— |
| impunem, | 1690 | impunem | 1690 | The book-Latin of Bottini's monologue is far
more scant than that of the preceding one, but
classical quotations are very common. As this
latter feature is of rare occurrence in Browning's
works, it must have been employed with dramatic
significance here, to bring out the Fisc's pride in
his Latinity. |
| et non illaudatum
se polluentem Parricidio | 1691 | et non illaudatum | 1692 | B., ix or 10: |
| filium, | 1693 | sed polluentem parricidio | 1693 | RB., IX: |
| ne raperetur ad stupra | 1695 | ne raperetur ad stupra | 1695 | cobilita fuit
liberitatem vitam ducere |
| Valer. Maxim., ubi supra,
num. 2. Tit. Liv., lib. 3.
Histor. | 1696 | tanti illi cordi fuit | 1696 | 249 cobilita fuit
250 vitam liberitatem ducere |
| tanti illi cordi fuit | 1697 | suspicio | 1697 | 516—B., clxxvii or 146: |
| amittendi Honoris | 1698 | honoris amittendi | 1698 | quod dato licito fine |
| suspicio, | 1699 | ut potius voluerit filia | 1699 | dammandis non sunt media |
| ut potius voluerit orbari | 1700 | ut potius voluerit filia | 1700 | 521 quod dato licito fine |
| filia, | 1701 | quam illa incederet | 1701 | ad illum assequendum ordinata |
| quam illa incederet | 1702 | inhonestis | 1702 | 524 ad illum assequendum ordinata |
| inhonestis, | 1703 | licet non sponte | 1703 | 525 ad illum assequendum ordinata |
| licet non sponte. | 1704 | Occidit | 1704 | non sunt dammandis me-
dia |
| Occidit | 1705 | in propriis domo | 1705 | Cf. RB., VIII, 1180, 1322, 1482. |
| ut Adultera, ciusque Parentes | 1706 | ut adultera e parentes | 1706 | 517—B., cii or 85: |
| consci agnoscunt | 1707 | consci agnoscunt | 1707 | nimis incongrue |
| nullum locum, nullumque | 1708 | nullum locum, nullumque
esse esse | 1708 | 982 nimis incongrue |
| asylum | 1709 | asylum | 1709 | 518—B., clxxxii or 150: |
| esse datum, et impenetrabilem | 1710 | impenetrabilem | 1710 | ego teneo contraria senten-
tiam |
| Honorificatio | 1711 | honorificatio | 1711 | 983 sententiam ego teneo con-
traria |
| neve ibi | 1712 | neve ibi opprobria | 1712 | |
| continuantur opprobria, | 1713 | continuantur | 1713 | |
| et Dominus quæ turpum Testis | 1714 | et dominus quæ testis | 1714 | 519—B., clxvii or 138: |
| fuit, | 1715 | fuit turpum | 1715 | subsistit |
| esset et ponere. | 1716 | esset et ponere | 1716 | responsum tradita |
| Occidit, | 1717 | Occidit | 1717 | quod non sit attendens Titu-
lus |
| quia alio modo | 1718 | quia alio modo | 1718 | 1532 responsum tradita |
| non poterat eius existimatio | 1719 | non poterat ejus ex-
istimatio | 1719 | 1533 quod non sit attendens
Titulus |
| laesa tam enomiter | 1720 | laesa tam enomiter | 1720 | 1534 sed probatio |
| ducere cicatrices. | 1721 | ducere cicatrices | 1721 | ex Processu resultans |
| Occidit ut exemplum præberet | 1722 | Occidit ut exemplum
præberet | 1722 | 1535 et pœna per sententiam im-
posita |
| Uxoribus | 1723 | uxoribus | 1723 | 1536 imposita |
| Sacra Iura Coniugii religiose | 1724 | jura conjugii | 1724 | |
| esse servanda. | 1725 | esse servanda | 1725 | |
| Occidit denique, | 1726 | Occidit denique | 1726 | |
| ut pro posse honestus viveret, | 1727 | ut pro posse honestus | 1727 | |
| sin minus | 1728 | viveret | 1728 | |
| proprii Honoris | 1729 | sin minus | 1729 | |
| offensi | 1730 | proprii honoris | 1730 | |
| commiseranda victima caderet. | 1731 | omena | 1731 | |
| | 1732 | commiseranda victima | 1732 | |
| | 1733 | caderet | 1733 | |
| 514— | | | | |
| The remaining Latin of Book VIII is adapted
with free modification as follows: | | | | |
| 131 tadas jugales init, sublit, from Catullus 64, 30; tadas
jugales celebrare | | | | The following passages are quoted or adapted
by the Fisc from classic sources: |
| 132 connubio stabili sibi junxit. Ver., A. I, 73. | | | | |
| 898-900 Crudum Priamum, Priamique pisinossos. | | | | |
| Found as a scholium to Persius I, 4. The scholium reads as follows: <i>Labeo transluit Iliadem verbum ex verbo ridicule satis. Eiusque est ille versus: crudum manduces Priamum, Priamique pisinossos.</i> (Iliad IV, 3.) That is: "Labeo translated the Iliad and Odyssey literally, but ridiculously enough. This verse is his, 'you may chew up Priam and his kids too.' Possibly this scholium fell under the Poet's attention when he turned to his Persius to verify the quotation from Persius, Fourth Satire, lines 50-1, which are found at B., 170. | | | | |
| | | | | 145-7 lene tormentum ingenio admoveas, plerumque daro. Hor., Odes, III, 21, 13. |
| | | | | 148-1 Discedunt aucti amores, manest amor. Unidentified. |
| | | | | 149-6 novorum nascitur ordo. Ver., Eccl. IV, 5. |
| | | | | 150 constans in levitate. Ovid, Trist. V, 8, 18. |
| | | | | 151-8 Credere non illum ibi de scelesti plebe delectum. Hor., Ode II, 4, 17. |
| | | | | 152 huī prisca fides. Ver., A. VI, 89. |
| | | | | 153 insanit homo (aut versus facit). Hor., Sat. II, 7, 117. |
| | | | | 154 negatis artifici sequi voces. Persius, Profl. 11. |
| | | | | 155 sororia saltum oscula. Ovid, Met. 4, 334: 9, 537. |
| | | | | 156 ut videt ut pœnit. Ver., Eccl. VII, 41. |
| | | | | 157 non habet nesciando sensu retinendu. Ennius, quoted by Cicero, de Senect. IV, 10. "hau" is inserted by the Poet. |
| | | | | 158 Quid vetat. Hor., S. I, 10, 56. |
| | | | | 159 redunt Saturni regna. Ver., Eccl. IV, 6. |
| | | | | 160 infelix lolum, cardus horridus. Ver., Eccl. V, 37-9. |
| | | | | 161 forsan et haec olim. Ver., A. I, 203. |
| | | | | 162 filius est quem nuptie demonstrant. Unidentified. |
| | | | | 163-5 Cujum pecus? At Melibœus? Non sed Egonis! Ver., Eccl. III, 1-2. |
| | | | | 166-6 Cur ego desperare nerf sive coniuge mater, et parere intacto dummodo casta vir? Ovid, Fasti V, 241-4. |
| | | | | 167-7, 80- Incipit, parve puer, risu cognoscere patrem. Nec anceps haere, pater, Puerto cognoscendo. |
| | | | | 168 Solventur tabulae (solventur). Hor., Sat. I, 60. |
| | | | | 169 tenax propositio. Hor., Ode III, 3, 1. |
| 521—RB., IX, 214-5: | | | | |
| | | | | Sermocinando ne declinem ultra clepsydram. Medieval clerical saying. |

522—

646 suis expensis nemo militat.
782-3 non idem semper dicere, sed spectare debemus.
(Proverbial sayings.)

523—B., cclxviii or 196:

Incidit in Scilam cupiens evitare Charybdim,

An adaptation of line 30x, of Book V, of the Alexandreis of Philippe Gaultier, a French Latin poet, 1513. The verse is founded on a Greek proverb derived from the *Odyssey*.

524—

There were evidently two stages of the trial of Guido and his fellow-assassins, as B., 192, speaks of "both presentations of the case," and B., 195, speaks of "the second setting forth of the case." The second stage of the trial was more learnedly and more skilfully fought, and the arguments are longer and more acute. They are based in part on the additional evidence secured by means of the torture of the vigil, and the Advocate of the Poor begins this part of the case with a sharp attack on the legality of the torture which had been decreed. Pamphlets 1-7 and 14 belong to the first stage of the trial. This is clearly proved, even in the case of pamphlet 14 (which was put in wrong order) by the references in the later pamphlets to paragraphs, or points of law, included in the earlier ones. Thus pamphlet 8 includes reference to pamphlet 14. Pamphlet 9 refers to pamphlet 8, while pamphlet 13 refers to pamphlet 9. In this way the order of the pamphlets in the trial is established as follows:

First stage: 1, 2, 3, 4, 5, 6, 7, 14.

Second stage: 8, 9, 11, 12, 13, 16.

Pamphlet 10, the first anonymous Italian narrative, is referred to by No. 13, and probably had just preceded it. All of these arguments must have been rapidly prepared, as they extend over only a month of time. In several places the lawyers speak of being pressed by the scantiness of time, and Gambi, in No. 12, speaks of having had but three hours to prepare.

525—RB., V, 12-3:

Noblemen were exempt, the vulgar thought,
From flogging;

This point was made by Spreti and denied by Bottini (B., 166). Cf. RB., IV, 1625-8; VIII, 316-23.

526—RB., I, 979-80:

His limbs' late taste of what was called the Cord,
Or Vigil-torture more facetiously.

The torture of the vigil, which is used with such striking effect by the Poet in giving setting to the monologue of Guido Franceschini, was evidently not inflicted at the very beginning of the case, as the Poet imagines, but between the two stages of the legal argument (Note 524). For in the first stage there is continual argument concerning this torture as yet not having been inflicted, while in the second stage it is evident that the torture has been inflicted, and confession has followed, and the lawyers are merely accusing and defending the action of the court in permitting such painful torture.

It seems that the prosecution, being dissatisfied with the first confession under milder torture, in which Guido claimed he had given orders, not for death, but merely for mutilation (B., 20), had demanded the torture of the vigil to gain the whole truth. Spreti and Arcangeli (B., 28, 35) oppose this, and are refuted in turn by Gambi and Bottini (B., 52, 166). Evidently the court decreed the torture, and secured far more of a confession, and part of this is probably what is given in pamphlet 9, though the confessions as a whole have been lost. The further fact that the assassins were still further planning to murder Guido in turn (Note 338) was probably revealed in this way. Spreti at the beginning of his next argument, No. 9, sharply attacks the legality of the decree of torture (B., 105) and tries to have the evidence thus secured thrown out of the case. Bottini in turn (B., 135 *et seq.*) refutes him at length, and on the confession demands the infliction of the death penalty without further delay (B., 157).

The nature of this torment and its specific effect on Guido is not described in the Book, though the Pamphlet speaks of Baldeschi fainting under the cord (Note 390). It is merely referred to in such general terms as "the rigorous torment of the vigil." The Casanatense pamphlet (p. 223) gives a fuller and better account of the examination under threat of torture. To gain more definite knowledge on this point, Browning evidently traced the reference given at B., 28, to Farinacci, qu. 38, nu. 71, and had there found the full information he wanted. We have undoubtedly proof that he made such reference, for in lines 428-43 of Book VIII of the Poem he paraphrases Farinacci's text closely, as may be seen in Notes 386-9. Agostinelli seems to have been excepted from this torture (B., 114), *non fuerit denuo constituta* (Note 315).

I quote the full text of Farinacci: (*Prosperi Farinaci iuriconsulti romani, Praxis et Theorica criminalis Luggduni Horatius Cardon, 1606, Pt. I, Tome II, p. 201.*)

The fifth and last among us is the *tomentum vigiliae*. At the time of Marsilius, who claims to be the inventor of this torment, the accused was placed upon a bench and made to sit there, and two men were present to watch lest he should fall asleep, and if he did sleep, then to wake him and for forty hours would not permit him either to sleep or to rest. Finally when he was promised rest within such a time, he was compelled to confess. Marsilius says of this torment that although it may seem ridiculous, no one is found so strong of spirit as to resist it, and this is elsewhere testified as being true. But in this evil day of ours, by some fate unknown to me, whether because of the severity of judges or the obstinacy of criminals, this torment has taken on a harsher and more cruel manner. For such a bench, which some call the Goat and others the Horse, is raised from the earth as high as a man's stature, and its top is not level, but is a little higher in the middle. * * * On the top of this bench the accused is made naked and bound to prevent him from falling, and with his hands bound behind his back and fastened by a rope that is on top of the bench, not otherwise than if he were to be tortured. And what is worse, his arms are held extended by the same rope, either entirely or in part, as the judge sees best. There the luckless accused * * * is detained for five or ten hours, and sometimes even longer at the Judge's discretion. And this is at the same time the torture both of the "cord" (*fusis*) and of the vigil. What is more pitiable, out of a hundred men who have suffered this torment, I believe that not more than four or five have been martyrs, the rest indeed were confessors (*martyres, confessores*) for the torment is insupportable both by reason of the time and of the fearful pain and suffering. It is

quite true that I have seen it used only in the case of very atrocious crimes, such as the crime of *mala res*, murder in the open streets, highway robbery, infamous nudity, and such crimes under bann. Therefore, in inflicting such torment, judges should see that it be much tempered, and above all they should see that the arms of the accused be not much extended. For such extension for a long time is in itself perilous, and many have died in this very torment on account of it, and very many more have fainted.

527—RB., X, 3 and 6:

and read a History.

* * * * *

Of all my predecessors, Popes in Rome:

Browning's method of creative art as seen in his use of the "old yellow book" leads me to a feeling that lines 32-150 of Book X are a free paraphrase of some actual history of the Papacy, which had fallen into the hands of the Poet. But I have not been able to find any such original for the passage as a whole. The facts given in these lines are such as are found in one or another of the historians, and in some cases even the form of expression is similar. Some extracts are given below with the line references to the corresponding lines of *The Ring and the Book*.

Luitprand, *Historia Gestorum Regum et Imperatorum sive Antropologia*.

No. 31. Concerning Pope Sergius who ordered them to drag Formosus from his tomb, and to depose him after he was dead.

When he [Sergius, a mistake for Stephen] had been established Pope, as one impious and ignorant of divine teaching, he commanded that Formosus be dragged from his tomb, and that he be placed in the Papal throne, clothed in his priestly robes (42-43). And to him said: "Why when thou wert Bishop of Porto (46), moved by a spirit of ambition, usurped not the universal throne of Rome?" (47). When these matters had been carried through, he commanded that the body be stripped of its sacred robes (81), that three fingers be cut off (84-5), and that it be cast into the Tiber (87-88). And all whom Formosus ordained, he reduced to their own rank (74-5), and reordained them.

No. 31. Concerning the body of Formosus, which was cast into the river by Sergius, and then found by fishermen, and saluted by the images of the saints.

But of what authority and of what religious life Formosus had been, we can gather from this: for when he was afterwards found by fishermen (112) and carried back to the church of St. Peter, the chief of the Apostles (120-1), certain images of the saints reverently saluted him when set in his place (124-6). For I have very often heard this from the most religious men in the city of Rome (122-3).

Fleury in his *Histoire Ecclésiastique*, Book 54, p. 579, gives the following account:

Pope Stephen the Sixth [sic] held then a council (33) in which he condemned Formosus, his predecessor. He had his body disinterred. They brought it in the middle of the assembly (38) and placed it on the papal throne (44), reinvested with his robes of office (45), and gave him an advocate to respond in his name (50-1). Then Stephen, speaking to the body as if it were still alive: "Oh, Bishop of Porto (46), tell me why thou hast carried thine ambition even to usurping the seat of Rome?" (47). Having condemned him (67-9), they despoiled him of his sacred robes (81), cut off his three fingers (84-5), and finally his head (86), and then cast him into the Tiber (88). Pope Stephen deposed all those whom Formosus had ordained (74-5), and ordained them anew.

p. 66. Theodore, who died only twenty days after his ordination (108), in that time left no stone unturned to achieve as far as possible the reunification of the Church. He called back the Bishops who had been driven from their sees, and reestablished the clerics ordained by Formosus and deposed by Stephen, and restored them to their sacred honors and the exercise of their functions. He caused them to carry back with due solemnity the body of Formosus into the burial place of the Popes (110-21); for it had been found by fishermen (112). And as they were bearing it in, many persons then present (122-3) assure us that the images of the saints saluted him in passing (125-6).

Sergius declared against Formosus and approved the procedure of Stephen VI (142-3); whose body [note it is Stephen's body] he had transferred ten years after his death and placed over him an honorable epitaph.

Floodardus tells the matter as follows: Then Stephen the sixth [sic] on the sacred throne, who impresses us as harsh, but deserved his own contemporaries more harshly, who did cruel things to the living, but acted even more brutally toward the dead, and who attacked Falco with threats and Formosus with very deeds, assembled an unfortunate council, over which he presided harshly (34).

Platina's *Lives of the Popes*. Translated by Benham.

Stephen the VII [sic] * * * persecuted the memory of Formosus with such spite, that he abrogated his decrees, and recinded all he had done. * * * Martin the historian says he hated him to that degree, that in a council which he held (33), he ordered the body of Formosus to be dragged out of the grave, to be stripped of his pontifical habit (81) and put into that of a layman, and then to be buried among secular persons, having first cut off those two fingers of his right hand, which are principally used by priests in consecration (85), and threw them into the Tiber. * * * Theodosius, restored the decrees of Formosus and exonerated his friends. * * * Theodosius removed to Ravenna (112), where, calling a synod of seven bishops (117), he condemned all that Stephen had done (135) and restored the decrees of Formosus, declaring it irregularly done of Stephen to reordain those on whom Formosus had conferred holy orders.

Biographie universelle, XIII, 138.

Stephen VI had had for his predecessor Formosus, whose memory he wished to disgrace with such an excess of zeal as to betray both ignorance and ferocity. Formosus had been Bishop of Porto, and was called as Bishop of Rome; this translation from one see to another might still seem a criminal innovation. * * * Stephen called a council to have Formosus condemned. He had his body disinterred and brought into the assembly (38-9). They placed him upon the pontifical chair (44), reclined in his robes of office (45) and gave him an advocate to respond in his name (52). Then Stephen, speaking to the dead body as if it were alive: "Why, oh Bishop of Porto, (46) hast thou carried thine ambition to the point of usurping the seat of Rome?" After he had been condemned, they despoiled him of his sacred robes (81), cut off his three fingers and then his head (84-6), and then cast it into the Tiber (88). This is the account of Luitprand (22) adopted by Fleury. Platina assures us that he cut off the two fingers which serve in consecration (85), which seems more probable.

528—RB., III, 96-7:

That doctrine of the Philosophic Sin:
Molinus' sect:

B., 120, speaks of the "Doctrine of Molinos and the philosophic sin, which has been checked by the authority of the Holy Office." The historical and philosophical meaning of this reference may be found elsewhere. Browning has stated its significance in the world he is picturing (RB., I, 307-14):

* * * the sect for a quarter of an hour
I' the teeth of the world which, clown-like, loves to chew
* * * * *

Aught it may sport with, spoil, and then spit forth

Cf. RB., II, 126, 175-7; III, 34, 109, 987; V, 203, 223, 870, 1043, 1238, 1838; VI, 152, 473; VII, 769; VIII, 697, 1074, 1337; IX, 33, 566, 727, 1048, 1499; X, 1869, 2067; XI, 643, 2041; XII, 654.

529—RB., VII, 22-3:

the marble lion * * *
With half his body rushing from the wall,

This strange old sculpture, the "*bestia*," is familiar to the visitors at San Lorenzo in Lucina.

530—RB., VI, 462:

Those lancet-windows' jewelled miracle,—

Murray's Northern Italy: "The tall lancet windows of the Tribune (in the Duomo) have been compared and even preferred to the Five Sisters of York Minster."

it are the letters A E I. Ever after her death my father wore it on his watch chain." A friend of the poet has also stated that during his last illness the poet kissed the ring with all affection before composing himself for his night's rest. As he thinks of his Lyric Love he compares this ring with

Thy rare gold ring of verse (the poet praised)
Licking our England to his Italy!

RB., XIII, 873-4.

Such is the figure employed by the Italian poet Tommasei in the inscription for the tablet which the municipality of Florence placed on Casa Guidi in honor of the poetess they had come to revere.

540—

It has seemed well to give a transcript of the second and third letters [pp. cxxxvii-xi] as the handwriting is difficult to read.

Molt' Ille e Mto Onle Sig^r mio Pr. Oss.
(In full = Molto Illustr^e e Molto Onorevole
Signor mio Padrone Osservantissimo.)

Le giustificazioni mandate non sono giunte in tempo perché oggi finalmente dopo tanti contratti è stata eseguita la giustizia del povero S^r Guido con farli la testa, e i quattro sicari sono stati impiccati. La causa fù risolta Martedì, mà perché s'era dedotto il chiericato, e per questo si pretendeva che quanto a lui non vi entrassi la uita doppo che s'era spedita stoffetta in Arezzo per hauerne le giustificazioni il Papa passò ieri il chirografo, e ha voluto che oggi oninante si eseguisca. Già che è stata volontà di Dio, che egli paghi simil pena almeno con le scritture fatte se n'è ricavato che morì galant' uomo, perché oltre l'essere molto un coragno e esemplare è stato compassionato da ogni galant' homine e non si può dire niente la sua morte in materia della reputazione. Vi è concorsa tutta Roma come puol credere, e non ui è stato riparo con tutto che si sia scritto forte, e non li sieno mancate raccomandazioni di gran conseguenza, perché il Sig^r Ambasciatore dell' Imperatore ne parlò di proposito Martedì, conforme egli mi disse ierl' altro, e poi le cose sono precipitate in un subito.

Hò terminata la sua scrittura per la Cong^{re} del Concilio, e ogni volta che Monsig^r Segretario vogli portarla penso che siamo all' ordine. Io la prego à fauorimi di quelle copie del processo più presto che sia possibile, e quando il Can. Filippo non ne lasci l' adito fauorisa auissiamelo perchè io possa pensare à altri passi uolendo una uolta uscirne di questo imbroglio se possibile sarà e per fine resto con rieririla.

D. V. S. Molt' Ille e Molt' Onle

Roma 22 Febbr^o 1698.

Div^r e obli^r S^r

Gasparo del Torto.

[The letter is addressed:]

Al Molto Illo^{mo} e M^o Ecc^r Sig^r Mio Pr^r Col^{mo}

Il Sig^r Francisco Cencini

Firenze

541—Letter III:

Molt' Ille^e et Ecc^r Sig^r Signe mio Pt., Colmo

Martedì si propose la disgratiass^a ca' e la Cong^r del Governo risolue—Dilata et ad mente^m—La mente era che si aspettassero le giustificazioni del Chiericato consupato. Sù questa fauorevole resolu^z pigliarono fiato li Defensori e cominciarono à respirare i buoni Amici, quando mio Sig^r l'altra sera alle due di Notte muo^r proprio sottoscrisse il chirografo derogatis al Chiericato qual' si adducesse e alla memoria di uno dei Correi. Sottratta il Corr^r il quale era stato preso a Clit^r e punito concesso la certezza della Giustitia che è seguita doppo il pranzo del cinque, cioè del povero Sig. Guido con il taglio della Testa, e degl' altri quattro Correi con la forza. Non significo à V. S. Ecc^r il mio dolore, poiche di q: ne potrà essere lei med. veridico testimonio.

Le giustificazioni sarebbero state di rilevanza grandiss^a mà non nel caso p, perchè mio S^r hò voluto così.

Acciudo la posiz^e del Fisco, mancandogli solo una risposta che inviarò subito chi mi sarà capitato acciò V. S. Ecc^r habbia l'intera posizione.

Ho scritto al Sig. Ausoc^r del Torto èbrigato dagl' Interessi p, potrebbe salire V. S. Ecc^r sì nella Ca^r Matrimoniale si nell' altra del Gomez onde mi rimetto à tutto q^r che V. S. Ecc^r li scriurà, pregandola sempre più d' incessanti comandi acciò perpetuam^r possa essere

Roma li 22. feb^o 1698.

Ser. Oss. e Ul^r

Carlo Ant^r Vgoliniucci

DI V. S. Ecc^r

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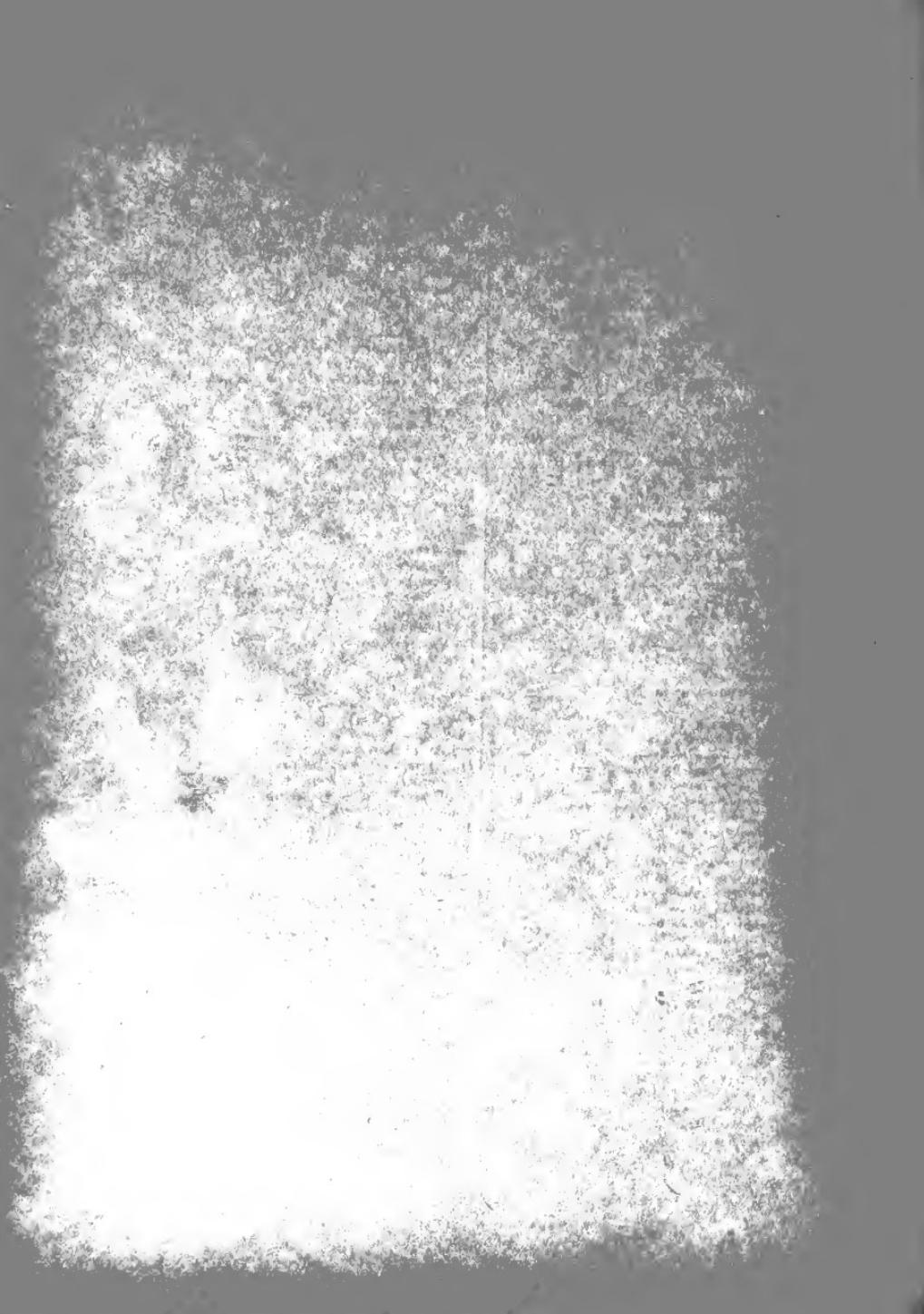
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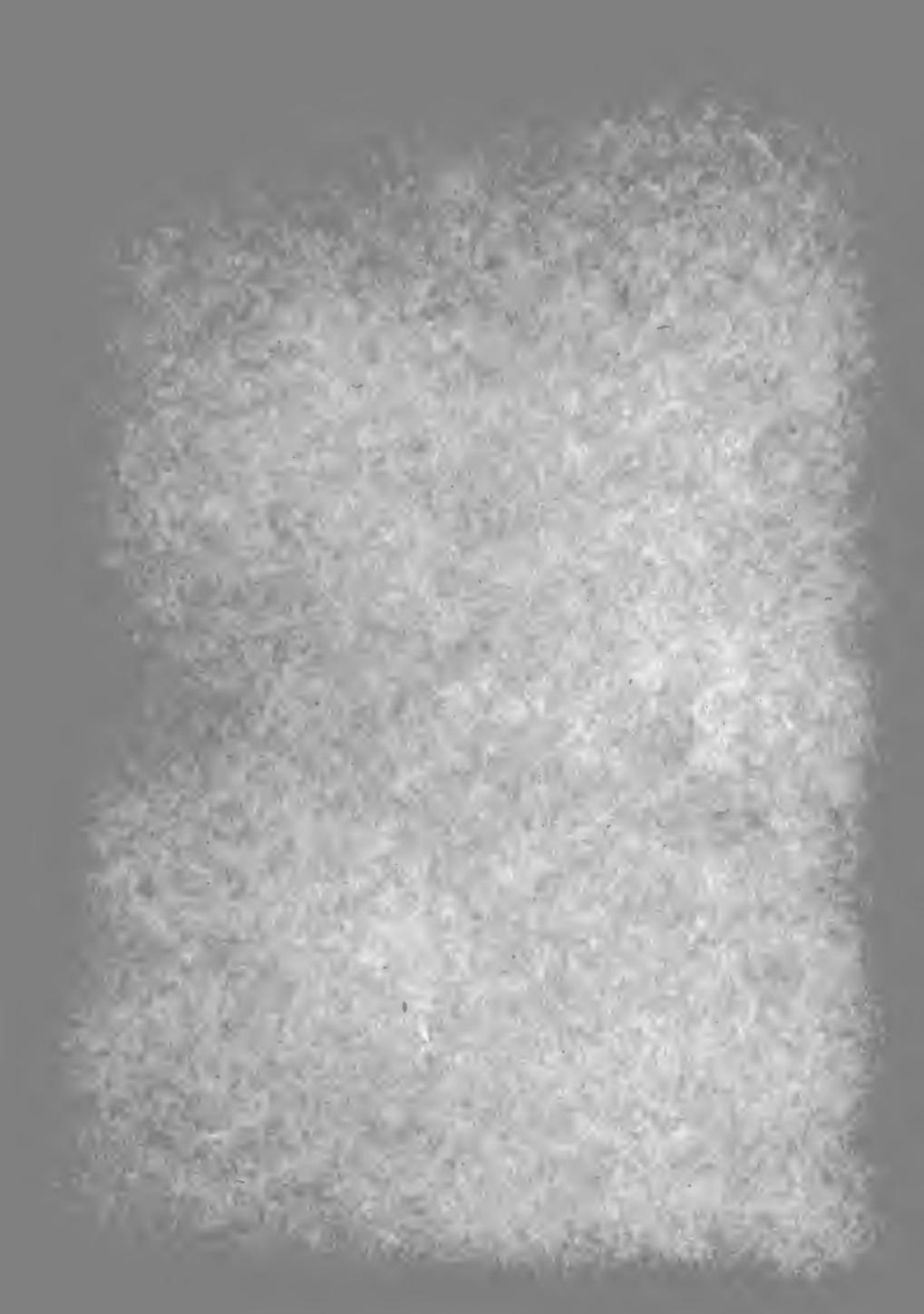
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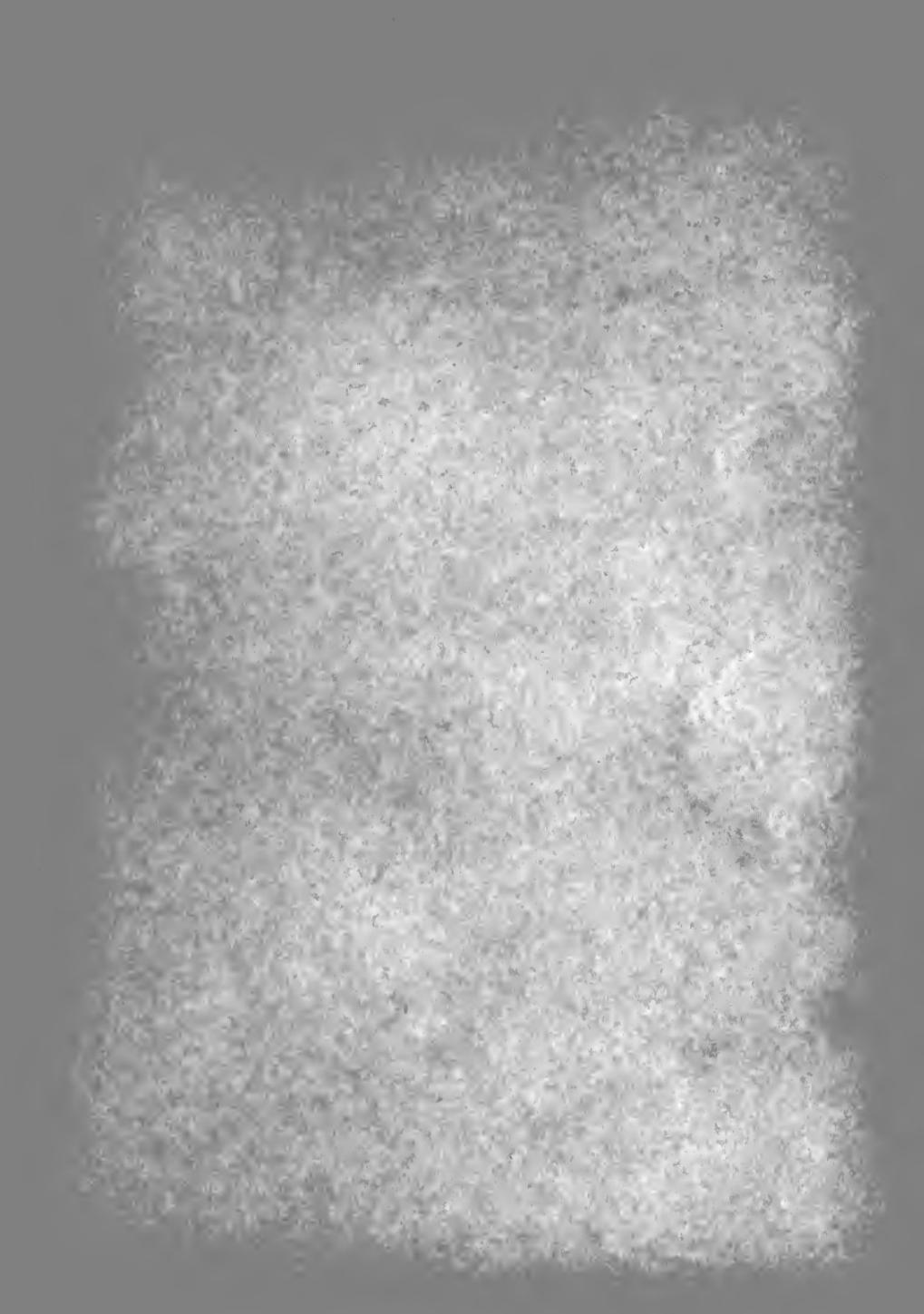
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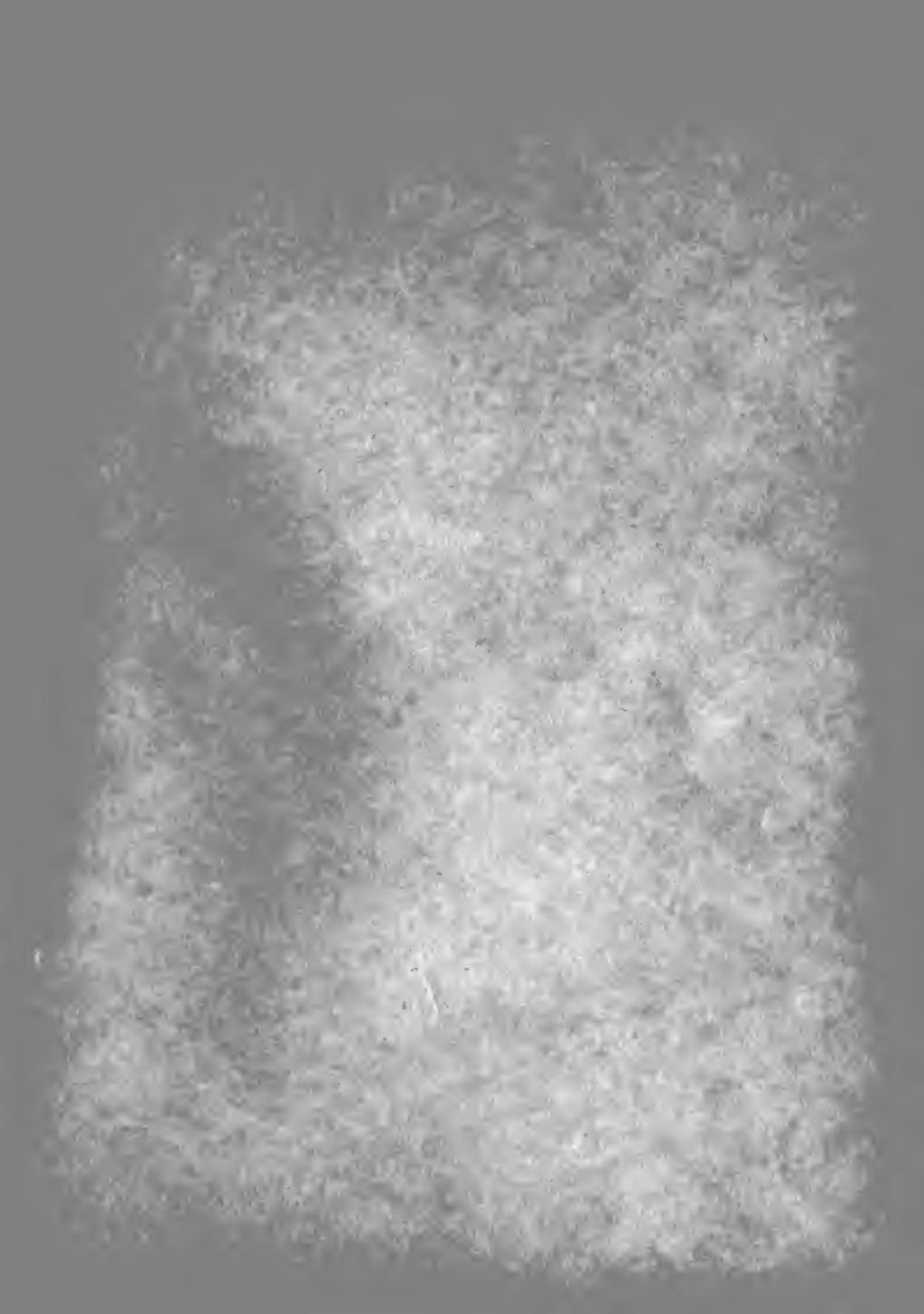
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